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SOME UNREPORTED OPINIONS OF A TERRITORIAL JUDGE 1805 to 1823*

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Augustus Brevoort Woodward came to Detroit from the City of Washington on June 29, 1805. His appointment as chief judge of the new Territory of Michigan had been presented by President Jefferson to the Senate on the 26th of February and confirmed by that body on March the first. He lost no time in proceeding, partly on horse-back, partly by boat, to this Territory which under three flags had had a varied and picturesque history.

Described as very tall in figure, with a sallow complexion, he may have resembled the cartoons of Uncle Sam, as he was customarily dressed in a blue swallow-tail coat, a red cravat and a buff waist-coat which he wore unbuttoned and from which protruded a mass of ruffles said to have been not overly clean. His boots were well greased, and his hair, dressed with a kind of Macassar oil, always received special attention. So he came to the scene of his future activities, possessed of a considerable knowledge of the English common law supplemented by his small store of law books which he carried in his saddle-bags. He was no novice in the art of pamphleteering for he had published at Washington eight or ten pamphlets on the government first signed "Epaminandos" and later acknowledged by his name. He had a warm admiration for President Jefferson and he never allowed this friendship to grow cold. He had also a trait which he was to cultivate to its fullest extent, and that was an inextinguishable ardor for combat when opposed.

Frederick Bates, another of the judges, whose commission postdated Judge Woodward's by only one day, was a resident of Detroit. Governor Hull, who with the judges was to form the anomalous government prescribed by the Ordinance of 1787 as that of the "Governor and Judges" arrived from Massachusetts two days later.

On July 2, 1805, the Territorial government was organized as provided for by act of Congress.[1] The Legislature was convened and on July 9 passed its first act. The two judges, with the Governor, lost no time in providing themselves with a bed of justice, and the sixth act, passed on the 24th day of July, adopted from the laws of Virginia, New York and Ohio, provided for a Supreme Court of the Territory.

Among the manuscripts[2] on file in the Bureau of Rolls and the Library at Washington, is a letter from Governor Hull to Secretary Madison, dated August 5, 1805, in which he says "I have received no intimation whether a third judge has been appointed. If not I hope it will not be delayed . . . I owe it to Judge Woodward to say, that I receive great assistance from his talents, his zeal and industry. Judge Bates is a young man of good understanding, great purity of mind and wants nothing but experience to render him eminently useful." The Court was thus first composed of Judges Woodward

* Presented at the Twenty-third annual meeting at French Lick, Ind., May 29-30, 1928.

[1] St at L 1:51; 2:309

[2] 31 Mich Hist Coll. 521

and Bates. On March 29, 1806, John Griffin, formerly a judge in the Indiana Territory, was appointed the third judge, but in the same year Judge Bates resigned, and again there were but two judges, nor was the third, James Witherell, finally appointed until 1808. Of the pronouncements of the Court Judge Campbell has said: "During the period before the War [i.e. 1812] the Court had to pass upon some important questions and displayed learning and ability."

In an early Michigan Supreme Court[1] report there is a review of the Territorial courts by B. F. H. Witherell who says "Judge Griffin was a native of Virginia. He was said to have read law early in life but seemed to pay little attention to it in after years. Previous to his appointment as judge he travelled in foreign countries . . . Judge Griffin was constitutionally inert, wanted firmness of character and disliked responsibility." In the disputes which became frequent in the government he invariably sided with Judge Woodward, but was sometimes known to complain of himself as "Woodward's drudge." Of Judge Witherell "it was said by one of the most eminent statesmen of his times that he possessed as pure a heart and as sound an intellect as is ordinarily given to human nature."

There is voluminous expression to be found concerning the chief judge, by himself (for he suffered from no inferiority complex), by his calumniators and by his biographers. "Judge Woodward was one of those strange compounds of intellectual power and wisdom in great emergencies with very frequent caprice and wrongheadedness that defy description."[2] "Perhaps no judge was ever more continuously in the public eye than was the eccentric and overbearing Judge Woodward."[3] "He was a man of considerable talent, but his excessive eccentricities, on the bench and elsewhere, detracted very much from his practical usefulness . . . Assuredly he was a man of good education for his letters and documents though showing him to be a pedant are well written and intelligent manuscripts."[4] "The chief justice was pronounced by one of his subsequent associates to be 'a wild theorist fit only to extract sunbeams from cucumbers' but this characterization presents only one side of his erratic and peculiar nature."[5] Defending himself Judge Woodward says[6] "It is said I am eccentric. This is a fault and it is [not?] a small one. I must diligently labor to correct it," but he addresses[7] this blast toward the Legislative Board with which he had fallen out, on the 8th of November, 1806: "It has been frequently insinuated to me privately that a great storm is arising and that it is directed against me. I stand in a situation to repel with disregard all the efforts of those who have assumed the direction of it, but in consequence of these admonitions I have looked around, I trust with an eye of intrepidity, to discover and meet my enemies. I have found two sons of a British drummer who think they have a hereditary right to make a noise in the world, and an Englishman who came

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[1] 4 Mich 12
[2] Campbell Polit hist of Mich p. 238
[3] Catlin Hist Detroit p. 195
[4] Witherell 4 Mich 12
[5] Cooley Michigan p. 149
[6] 12 MHC 530
[7] 31 MHC 567

to this country in exhibiting a monkey on his back for money . . . the most honorable opponents presented me." This communication was forwarded to Secretary Madison by Territorial Secretary Griswold with the note "As the extraordinary letter enclosed has been made public by the legislative board I have been requested . . . to transmit it to your department . . . The writer is by many seriously considered in a state of unhappy lunacy, or partial derangement."

Preserved in the vault of the Michigan Supreme Court at Lansing, and unreported, are some fifteen hundred files of law and equity cases heard by the Territorial Supreme Court from its first sitting to 1837 when the Territory became a State. The papers in each case are wrapped together, and until 1819 are in the handwriting of Peter Audrain first clerk of the Court, except such opinions as were written by Judge Woodward. I have examined all of the files, and have found no opinions by either Judge Griffin or Judge Witherell. This is remarkable because we are told "quarrels were frequent between judges Woodward and Witherell. Judge Witherell nearly always sat with his back toward Judge Woodward and often after Woodward had delivered an opinion Judge Witherell would say 'I don't see any sense in that view of the case, there's no argument in it.'" Judge Griffin, however, always sided with Judge Woodward, and together they formed a majority.

Owing to the great fire which had destroyed Detroit in June, 1805 the first session of the Court for the trial of cases, held September 18, took place in one of the two houses left standing. Judge Woodward had prescribed the form of procedure and the Court was opened with the following proclamation by James May, Marshall of the Territory: "Attention! The Supreme Court of the Territory is now sitting. Silence is commanded on pain of imprisonment." There are no written opinions for the first year or two, but early cases are of interest as indicating the latitude of the Court's jurisdiction. Proceedings were brought in the name of the United States. The first case called U. S. v. Isaac Bissell, jr., and Henry Fitch, involved some ten thousand feet of pine planks and twelve bundles of shingles which had been seized by the customs collector for the District of Detroit. These had been brought "from a foreign port or place in His Britannic Majesty's dominions in America commonly called Upper Canada" without "permit, license or other lawful authority." After hearing the case the Court "pronounces the following opinion, judgment and decree . . . It is the judgment of the Court that the goods and chattels libelled in this case be condemned and that the claimants refund the costs and that the goods be sold by the Marshall of the Territory at his house in Detroit."

The second case was a larceny case, U. S. v. Henry Hudson. It was the first jury trial, and like a modern jury its members promptly found the defendant "not guilty." The fourth case, Robert Abbott v. Thomas Jones, heard at a session held on the fifth day of October "at the council house in the city of Detroit" involved damages to the amount of two hundred and sixty three dollars found for the plaintiff by a jury who were "elected, tried and sworn the truth to speak," to which the Court added the costs of the case. This is the first case involving a slave, as Abbott had sold and delivered to Jones of Port Vincennes in the Territory of Indiana a negro woman held as a slave "by

virtue of a certain treaty between His Britannic Majesty and the Government of the United States." There were several of these cases later, and at least twice Judge Woodward wrote opinions upon the subject.

The first indictment for a capital offense was dated September 19, 1805. "U. S. v. Kiscacon, an Indian man of the Chippaway nation late of Sagina." The bill describes him as "commonly called the Chippaway Rogue . . . not having the fear of God before his eyes but being moved and seduced by the instigation of the devil on the ninth day of March in the year of our Lord one thousand eight hundred and two . . . with a certain steel knife of the value of fifty cents . . . ." The bill follows the English common law form used in capital indictments when as part of Upper Canada Detroit was under British dominion. Justice Riddell, in "Michigan under British rule, Law and law courts, 1760 to 1796"[1] quotes such a bill at length, and comments on the phrase in which the weapon is described and valued as being a relic of "deodand," i.e. forfeit to the king and cites Blackstone, Com. I, p. 300. This crime having occurred three years earlier justice in the Territory not only marched with lagging foot to bring the criminal to the bar, but it was entirely defeated in the final prosecution since on the Command to take the body appears in clear though somewhat faded handwriting "I have taken the body of the above named Kiscacon, an Indian, in obedience to the capias, on Sunday the 30th day of July, and in bringing him to prison he was rescued from me by an Indian called Little Cedar, his son, and other Indians unknown" signed "William Scott, Marshall."

Judge Edward Cahill, in an address on "Historical lights from judicial decisions"[2] says "It is doubtless known to most of you that slavery once existed in Michigan. Reference to that fact will be found in various histories. But it may not be generally known that we are indebted to the opinions of Judge Woodward . . . for a history of the origin of slavery in this territory, and for the declaration of law which resulted in its more speedy extinction." Opinions in two cases, In re Dennison and In re Patterson or Pattinson, the latter dated 23 October 1807, will be found in full in Michigan Historical Collections, v. 12, p. 511-22. Judge Cahill's conclusions upon the soundness of Judge Woodward's pronouncements may be of interest. He says "In his opinion in both these cases he went somewhat outside the record to give his opinion of slavery in general in emphatic language, and made it very evident that the greater number of slaves who had been brought into the Territory since the Ordinance of 1787 took effect were . . . unlawfully held as such. This volunteered opinion of the learned chief justice, although not having the force of a judgment upon the rights of such persons, was generally accepted and acted upon, and I find no record of any case affecting the liberties of such slaves."

It is not my intention in this paper upon Judge Woodward's judicial decisions to discuss his difficulties and altercations, when with Governor Hull and the other judges he sat as a legislator. However, to explain an opinion he handed down upon May 24th, 1810, it is necessary to say that during his abscence from the Territory from November, 1808 to February, 1809, forty-five acts designed to accomplish certain purposes were hastily passed and signed by

[1] p 462-3
[2] 38 MHC 118-30

the Governor. Upon Judge Woodward's return he was confronted with this legislation some of which made important changes in legal procedure. The Judge then "impeached" (the word is his) in the Supreme Court the forty-five bills passed during his absence, and since with Judge Griffin he formed a majority of the Court he was able to declare them unconstitutional and of no effect. His arguments are now upheld and declared to have correctly stated the law, but it is easy to imagine the excitement and animosity which were stirred up. Governor Hull, even, foolishly, issued a proclamation that the Supreme Court decisions were void, and that the people were to obey the laws. One of the contested acts provided for a probate court, and when the will of one George Hoffman was presented to the district court for probate in May, 1810, the district judges who sided with Governor Hull refused to accept it. A writ of mandamus to compel the district court to act was requested from the Supreme Court, was granted conditionally, and an opinion was written by the chief judge. This opinion in full appears in 37 Michigan Historical Collections p 33-36.

On July 25, 1810, Judge Woodward wrote an opinion "In the matter of Reuben Attwater, Secretary of the Territory of Michigan, who applies for the approbation of the judges to an extra allowance to the assistance [sic] in all the divisions of the Territory of Michigan in taking the enumeration required by the act providing for the third census of the United States." A rough draft of this opinion being among the Judge's papers it with other of his documents was printed in 8 Michigan Historical Collections p. 598-600. The only interest it has in this paper is to contrast the sparse settlement of inhabitants of the Territory with our now populous commonwealth. Speaking of the district of Erie the Judge says "the assistant making the enumeration on La Riviére aux Raisins must go personally to the Miami [Maumee] River and even cross the peninsula between two and three hundred miles to enumerate one or two inhabitants on the River St Joseph which enters Lake Michigan."

In June of 1811 there occured a misadventure which had for Judge Woodward most unfortunate and unforseen results. Twelve years later his disposition of the case was held up as one of the reasons why he was unfit to occupy his judicial position, and the report of his conduct therein plagued him for the remainder of his life. For a cause unmentioned in the record one Whittemore Knaggs "with force and arms at Detroit . . . in and upon a certain Augustus Brevoort Woodward . . . an assault did make, and him, the said Augustus Brevoort Woodward, then and there did beat, bruise, wound and ill-treat, so that his life was greatly despaired of. . . . " This indictment, signed by the Attorney General and all the Grand Jury, was filed in Court September 17, 1811, proof that in three months the Judge had not recovered his equanimity nor forgiven the insult. With his emotions still seething, and the better to buttress his intention of sitting in the case, on July 25 the Judge penned the following opinion which appears, with much underscoring to emphasize his points, in File no. 273.

"In the matter of the United States of America against Whittemore Knaggs, interpreter for certain savage tribes, for assaulting a judge. The principles of the common law of England, by which alone the present case is affected, in relation to the powers and rights of judges and justices, and with

respect both to assaults and to abusive language, appear to be settled with a very considerable degree of precision. In general and in every civil case without exception a regard to the purity of justice and to the impartiality of its administration has made it a rigorous rule that a judge or justice shall not act officially in his own case. In matters where the public is concerned, and becomes the party injured, though the judge or justice may also incidentally sustain injury, yet he may act; taking care that he do [sic] not abuse the confidence reposed in him to the oppression of individuals. It may indeed be, in some measure, considered as a duty not lightly to be dispensed with that he should act. He is at all times and in all situations a conservator of the public peace. He is the protector of others; and he cannot be so effectually unless armed with the power to protect himself. The following distinctions appear to have been gradually and in modern times clearly deduced from the train of adjudications which have successively been had upon this subject: *First*: Courts of justice may punish an assault taking place before them, and in their view, or directed against themselves, their members or officers. *Second*: Courts of justice may punish abusive and disorderly language and conduct taking place in like manner. *Third*: A judge or justice, *being in the execution of his office,* may commit the offender for assault, or abusive language in his presence toward himself or others. *Fourth*: A judge or justice may, at all times, bind the offender to appear to answer and to the intervening peace and good behavior, for an assault committed upon himself, though not then in the execution of his office, or otherwise than generally as a conservator of the public peace. For abusive language used *to* himself personally, though not then particularly in the execution of his office, or, otherwise than generally as a conservator of the public peace, *relating to the exercise of his public duties,* he may also bind in the same manner. If any other judge or justice be present it were fitting to desire his aid. *Fifth*: For abusive language used to a judge or justice personally, or in his presence, *relating to the exercise of his public functions,* though not then engaged in the actual execution of them, otherwise than generally as a conservator of the public peace, the offender is indictable. For abusive language used of and concerning a judge or justice, when he is not present, relating to the exercise of his office the offender is not indictable, but he is *subject to a civil action.* Words are, in this case, actionable, which are not so in other cases. For abusive language used to a judge or justice personally, when not in the actual execution of his office, he may not commit, as he might do if the same language were used to him in the actual execution of his office. The offender being subject to indictment for such language, may be bound to appear to answer, and in the mean time to be of good behavior and may be committed for want of security. For abusive language used of a judge or justice, not in his presence, the offender may not be committed nor may he be bound to appear the offense not being indictable, but presenting only the basis of a civil action. *Sixth*: A judge or justice may not only act where he is himself assaulted or abused to his face, but may also record a forcible entry on his own possession. In all other cases where the judge or justice appears to be interested, or concerned as a party, he may not act. *Seventh*: A judge in all cases, and a justice in most, for an official act or for a mistake in judgment, cannot be prosecuted in a civil action. *Eighth*: A principle is stated in the English law the applica-

tion of which in the United States of America has not been observed by the undersigned. If a judge or justice certify that a person hath committed a breach of the peace in his presence, such person may be fined by the court of king's bench, without allowing him any traverse thereto.

Regarding the first seven of the foregoing principles to be clearly and definitely settled as the existing law, without reference to the particular expediency of the several provisions, the undersigned has considered it necessary and advisable to ask the aid of others, charged like himself with the duty of conserving the public peace; and in pursuance of the proceedings had in the matter, the offender is to be recognized to appear and answer for the assault committed and in the mean time to be of good behavior himself in three thousand dollars, and two good securities in one thousand five hundred dollars each, and is to be and remain in the custody of the marshall until the same be complied with." [Signed] Augustus B. Woodward, one of the judges in and over the Territory of Michigan, July 25, 1811. "A list of the authorities resorted to in framing the preceding opinion: Lombard, passim; Dalton, passim; The Commentaries of Blackstone, vol. 3; Bevin's justice of the peace, title Justice; Encyclopedia, article Justice of the peace; Strange's Reports, 420,617,1157,1168; Espinasse's Nisi Prius, action of False imprisonment; Salkeldt, 396; Moor, 247."

In November, 1822, a series of letters signed "Michigan" and published in the Gazette, A Detroit newspaper, reviewed this case extensively, and made the charge that the Judge invited two justices of the peace to become his associates. "They did so, and you, in conjunction with them, after citing many authorities to justify yourself . . . ordered that Knaggs should enter into recognizance in the sum of $3000. . . . These facts appear by the record in your own handwriting, on file in the clerk's office of the Supreme Court. For this conduct you were presented by the Grand Jury for the Territory." The presentment, complaining of misbehavior, was sent to Washington, but the Judge, who was a believer in casting an anchor to windward on all occasions, forestalled it by sending to President Madison on March 12, 1812, the papers in the case and a certificate from counsel for Knaggs stating that it was upon his advice the magistrates were called in, as "my client . . . was not reconciled to put himself on his examination before the very person he had assaulted . . . I further certify that . . . I am . . . convinced of the legality and regularity of the proceedings." On May 4, 1812, the Speaker of the House laid the presentment before Congress. It came to nothing because, as Charles Moore remarks "war now came to silence laws." By act of Congress, June 18, 1812,[1] a state of war declared to exist between Great Britain, its colonies and the United States of America.

A long article might be written of Judge Woodward's activities in the War of 1812. In September, 1805, in the first flush of his admiration for the Judge, Governor Hull "reposing special trust and confidence in the patriotism, valor, fidelity and abilities of Augustus B. Woodward, Esq." had presented him with a Colonel's commission in the First Regiment of Militia. The Judge appears never to have made use of this honorary title, nor to have done any active fighting. He was the Councilor, the Mediator, the Judge. Upon him

[1] St at L 2:755

was laid the burden of representing to the British commander the difficult situation of the American citizens on the one hand, and on the other of reconciling to the rules of war and the law of an occupied territory the thoughts and conduct of his compatriots.

Living near the River Raisin he had first hand information of the massacre of its inhabitants, the horror of which he reported to James Monroe, then Secretary of State. Curiously enough one of the prisoners in whom he interested himself was the same Whittemore Knaggs with whom two years before he had been at enmity. "My intercession," he says, "was solicited for him and was cheerfully bestowed."

Instead of inditing legal opinions his pen now flowed forth in long letters to those in authority and to those subject to authority. To Colonel Procter, British Commandant, he writes[1] "I stand not here to shield real guilt and deparvity [sic] from proper punishment, but I regard it as my bounden duty to defent [sic] the *innocent,* and even with respect to the *guilty,* to see that guilt, viewed through a medium of prejudice and passion, should not be magnified beyond the bounds of reason". To the citizens of Detroit: "You have manifested a fidelity to your country which does you honor and commands respect. You have also recollected that the enemy has *his* rights and you have, in your turn, respected those rights." To James May, who has written to ask if it would be ethical for him to exercise the powers of a justice of the peace during the conflict "In the midst of the calamities with which it has pleased divine providence to environ our suffering people," he writes "It is the part of a good man to act with firmness. . . . The man who stands firm upon his own integrity; and who in his conduct to his country acts with a pure heart and with clean hands, is always safe, and constitutes a rock upon which the billows of malignity may roll but are repelled and broken in the contact."

Among the ransomed American prisoners was one Ensign Baker, who writes: "The exertions of these people were directed and point given to them by our ever to be venerated countryman, Augustus B. Woodward, who with unwearied zeal exerted himself in our behalf at Detroit. He was the life and soul of the remaining Americans, the man to whom they all looked up for success in the hour of difficulty and for advice on every occasion." Commenting upon this letter Judge Campbell says[2] "A man who made such a record at such a time is one of the nobles of the earth. If the history of his time requires his foibles and his oddities to be recorded let it also be recorded that before such qualities as he showed during these scenes of trial his weaknesses, though magnified an hundred fold were of very small account."

Malicious construction of his actions was, unfortunately, not wanting. It was said he was holding court under the British occupation while accepting a salary from the American government, and his resignation was demanded in a petition sent to Washington. In the fall of 1812 Colonel Procter, on several occasions proclaimed that Court would be held as usual, but as each date drew near he would issue another proclamation postponing the assembly until a later time. In a letter to James Monroe the Judge speaks of these postponements

[1] Papers & Records of the Territory 1790-1813 36 MHC 111-620

[2] Campbell Polit. hist. of Mich. p. 349-50

and says he expects them to continue. In a biography of Procter, C. M. Burton says[1] "Procter undertook to establish civil law in Michigan and directed the former officials to continue until further arrangements were made. He was not successful in establishing courts, nor in maintaining those already established . . . and Michigan continued during the British occupation virtually without courts." The files of the Supreme Court show no cases heard between August, 1812 and the third Monday in September, 1814.

The last case before the War upon which the Judge wrote an opinion was heard on the 6th of August. Governor Hull surrendered Detroit on the 16th of that month. When the American garrison at Michimillimackinac surrendered on the 17th of July, certain citizens, soldiers and officers were given safe conduct under the British flag on the schooner Mary bound for Black Rock in the state of New York. The vessel arrived off Detroit on August 2d. On approaching the town she was brought to by a cannon shot. Here she remained for some time, detained by the American commander. In the interval Robert Livingston, an officer who had been specially charged with the protection of the prisoners on the ship from "savage insult" was arrested in a civil suit, for the amount of a promissory note executed before the War and in the United States. While he was in jail the siege of Detroit took place, and a cannon ball penetrated the room in which he was confined, whereupon he petitioned for investigation of his case by writ of habeas corpus. In his opinion [file no. 277] Judge Woodward says "I am not at present satisfied that Mister Livingston though in the British service is really and truly a British subject. If he is not, but is an American I am not required to say, and do not say, that he loses any protection the flag he came under might give. Admitting him, however, to be a British subject I have little hesitation to say that if the vessel in which he came is received by the commander of the American forces as a flag of truce, or as a cartel, and he is recognized as one of the persons properly protected by that flag, that he cannot now be arrested for a civil matter, even though that matter be of an origin anterior to the war and occurring within the limits of the United States. Whether a vessel shall be received and considered as a flag of truce, or as a cartel, and whether any particular individual shall be received and considered as appertaining to her, and protected by her flag, are, as I humbly conceive, strictly military questions to be decided solely and conclusively by the military authorities. . . . From the materials, however, at present before me, it is not made to appear that the vessel was received and is considered as a flag of truce or as a cartel . . . and I, therefore, am not authorized to do otherwise than remand the prisoner."

File 290, the case of Joseph Cecire v. Augustus Legrave, called the third Monday in September, 1814, is the first case in the files after those in August, 1812. It is a suit to recover $2,000 on a breach of covenant, and seems to indicate that the Court was once more occupied with civil litigation.

From 1814 to 1822 I found no long opinions such as are not infrequent before the war. In a number of cases the Judge's handwriting, now somewhat shaky, appears on the documents, frequently as an order, occasionally as a de

[1] 15 MHC IX

cision, as in File no. 319, July 10, 1815 "In the matter of James Fig upon the return of a writ of habeas corpus." It appears that the lad, though "of tender years that is to say between eleven and twelve years of age," had been enrolled as a soldier and an attempt made to draft him for service. Upon the mother's evidence that the lad's father, of the same name, was dead and that the son had been mistaken for him the Judge grants the writ and concludes "it is therefore considered that he be discharged."

There are many gaps in the files and one, we may conclude, covers a somewhat famous case for no papers in it were found. It is known as the Case of the Earl of Selkirk. A record of the case and Judge Woodward's lengthy opinion thereon as printed in the Detroit Gazette in October, 1818, have been published in 12 MHC 483-505. In 36 MHC 346-9 are copies of letters from the Judge to John Quincy Adams, Secretary of State, from which it appears that the case agitated the Judge since he states that "a copy of the decision rendered and of all the documents connected with it, in extenso, has been transmitted to Boston for publication." He sketches the case thus: "At the late term of the Supreme Court of the Territory of Michigan a suit was pending against Lord Selkirk, brought by a Northwest trader, and which went off in his Lordship's favor, on the ground of the arrest having taken place on Sunday. It would have involved the question of jurisdiction. . . . Mr. Grant, the plaintiff, was seized by armed men under the direction of Lord Selkirk, and carried within the British limits. The whole of his outfit was taken from him. When brought before Lord Selkirk the latter observed that the commissioners who, on the part of the King, negociated the treaty by which the boundary was established were fools. Mr. Grant was, by his order, taken a prisoner to Montreal. . . . " The suit was brought for $50,000 damages for illegal imprisonment. The "noble defendant" made a motion, through his attorney, Solomon Sibley, to be discharged from his arrest on the ground of the same having been made on a Sunday. In an opinion of about 8,500 words written in Latin, French and English, with an imposing array of authorities from the prophets of the Old Testament through Justinian down to the latest of the English judges, Judge Woodward granted the motion. Reading the opinion one cannot escape the feeling that the Judge was relieved to have the affair go "off on the ground of the arrest having taken place on Sunday," rather than to have to decide whether James Grant was within the proper boundaries of the United States when seized. His attitude is most unlike his former belligerent one. Can he have been weighed down by the pressure of hostile public opinion? There was, by this time, active opposition to the facts and decisions of the Government and of the Court. "The people were weary of being governed by four men none of whom were chosen by themselves. . . . During all these years there was no remedy in law from the decisions of the judges. The people had no right of appeal to the Supreme Court of the United States and Congress did not interfere and seemingly was determined not to remedy the evil."[1]

A campaign of vindictive spite was inaugurated. The newspapers were filled with destructive criticism of the Court, and of the private reputations

[1] Farmer Hist. of Detroit p. 178

of its members particularly of Judge Woodward's. "The first half century of the Republic was conspicuous for the malignity of political quarrels and the utter disregard of the sanctity of the private reputations of public men. . . . Men believed as well as spoke all manner of evil against their antagonists."[1] John Gentle, who under the pseudonym "Michigan" wrote the articles reflecting on the Judge's conduct on the case of Whittemore Knaggs, attacked him most bitterly. His unmeasured denunciations, published in the press, appear to have been accepted as facts and repeated by biographers and commentators have persisted until it is now difficult to separate truth from fiction, reality from malignity. It is worth noting, however, that the most acrimonious attacks came from this man to whom the Judge had denied citizenship on the ground of unworthiness[2] and who, as a result, was prevented from sharing in the lands donated by the Government.

Like Rufus Choate's[3] the Judge's "vocabulary was highly Latinized, and he enjoyed pronouncing a sonorous and unusual phrase." He was undoubtedly eccentric even to having his shower-bath outside his door during a heavy rain storm. It is said that during the sitting of court he might direct that he be considered absent and he would be so entered "though to mere mortal eyes he appeared to be really present in propria persona." "On one occasion while a suit was being tried, feeling sleepy, he ordered the clerk to enter in the journal that he was absent, and shoving his chair back against the wall he closed his eyes as if gone to the land of Nod. Meantime the arguments of counsel were going on; and as one of the attorneys said something that thwarted his views, he suddenly moved forward to correct him. The attorney tartly suggested 'I thought your Honor was absent, the journal of the Court says so.' This nonplussed the Judge who ordered the record of his absence to be erased."

"In conversation he is known to have been entertaining and agreeable." He entertained at dinner the most prominent folk of the Territory. According to file no. 333 he was sued by James May for $466.08, the amount of a board-bill including candles and "spirits." His use of liquors was so widely criticised that he secured at least two affidavits from Detroit citizens that "at balls, dinners and many other convivial parties . . . his conduct was that which is becoming a gentleman." Alexander D. Fraser, a well-known attorney, takes oath "and saith as follows: I have been very intimately acquainted with Judge Woodward for some time back, and I have always considered him a very temperate man, and have never known him to be affected with wine or liquor. I consider him to be a man of expanded mind, and possessed of general as well as legal knowledge in no ordinary degree. His talents are superior to what generally falls to the lot of man and his legal requirements, I believe, have here and elsewhere been invariably allowed to be such as would adorn the bench of any country. . . . " Yet I found in file no. 604 a suit filed January 1, 1821, Smyth

[1] Campbell Polit. hist Michigan p. 233
[2] 36 MHC 200n
[3] Fuess—Rufus Choate, p. 233

v. A. B. Woodward, to collect a promissory note for $431.54 on which the Judge had not even paid the interest for a number of years.

The Judge never married. Mr. C. M. Burton comments thus: "This may have been because he found no lady who was willing to risk her life and happiness by a union with him, or it may have been because he found no one that he liked sufficiently well to make the partner of his life. He certainly was quite attractive to the ladies in general and to certain of them in particular for in letters to him and from him frequent mention is made of different young ladies of Detroit society." One such writes to the Judge as follows: "Miss Marianne Navarre accepts with particular pleasure the kind invitation of Mr. Woodward to take a walk on Sunday afternoon,"[1] while in behalf of another a would-be John Alden tells the Judge "When i [sic] mentioned your name the beautiful smiles flowed from her lovely cheecks [sic] in abundance, that, in my calculation what little i know about love business is Quantum Suficit for any man to proceed on in his courtship, and there shall be nothing wanting on my part to raise her smiles in your behalf."[2]

Judge Woodward published several books, one in 1809 called "Electron, or The substance of the sun," another in 1816 "The system of universal science" and others in other years. "In many ways he was the most interested in purely intellectual pursuits of any man at that time in Michigan."[3] "He had in mind the founding of the American National Institute, an institution not unlike to present Smithsonian Institution for the diffusion of useful knowledge."[4] He laid down the broad principle "that it is the duty of the State to furnish higher education, nonsectarian in character and so inexpensive as to be within the reach of practically all people." "His act creating the [Catholepistemiad or] University of Michigania proves him a visionary but with a noble and lofty, if premature, ideal of great value to humanity."[5]

Such are the Opinions of, and the opinions of others regarding, the man "who after a service of nineteen years on the Michigan bench saw the judicial system changed largely to be rid of him."[6] By act of Congress approved March 3, 1823,[7] the legislative and judicial powers were severed and the tenure of the judges changed from "good behavior" to a period of four years. Failing of reappointment in 1824 Judge Woodward resigned and left the Territory. In August of the same year President Monroe appointed him to a federal judgeship in Florida, where "on several occasions the decisions he rendered were regarded as so important that at the request of the members of the bar they were recorded at full length in the Court Journal."[8] He died at Tallahassee in 1827.

"In the full sense of the word he was a 'character' that only a Dickens could portray."

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[1] 2 MHC 657
[2] 37 MHC 452
[3] Jenks Augustus Woodward 9 Mich. Hist. Mag. 538
[4] Moore A. B. Woodward, 4 Col. Hist. Soc. Pub. 127
[5] Jenks supra
[6] Moore supra
[7] St at L 3:769
[8] Jenks supra

THE STATE LAW INDEX*

By MARGARET W. STEWART, Legislative Reference Service,
Library of Congress

The act of Congress approved February 10, 1927, requires the Librarian of Congress to "report to Congress biennially an index to the legislation of the states of the United States enacted during the biennium, together with a supplemental digest of the more important legislation of the period." Owing to failure of appropriation for carrying this act into effect, it was just a year later when the organization of the State Law Index materialized. In the meantime, the tentative list of subject headings, which many of you have seen, was prepared for the use of the indexers when the organization should be completed. This outline was made from the index of state laws of the preceding ten years prepared in the Legislative Reference Service, one of the most useful card indexes in the files of the Library of Congress. Through a mistake in the printing of this list, discarded headings were indented below the last preceding heading. At the time it seemed unnecessary to go to the expense of correcting this in proof. It has resulted in considerable misunderstanding, but a word of explanation to the effect that these headings should have been indented has sufficed to set our correspondents minds at rest. The plan attempts to steer a middle course between detailed indexing, which would be prohibitive for the mass of material to be covered, and the listing of acts under broad, genenal topics, as was done in the New York State Library index.

Two primary considerations must be the determining factors in deciding the methods to be adopted in this undertaking. First is the necessity of avoiding such a degree of detail and analysis as will make the published volume too large and too expensive to be practical. I have with me a manuscript copy of the index for the legislation of 1923. It will be seen that the addition of another year and inclusion of several types of acts then excluded will make the index as large "as the traffic will bear." Second is the necessity of grouping in one place all legislation having the same objective, regardless of the terms used. These considerations require the use of broader titles than might be desirable if we were dealing with the legislation of a single state.

We have found it necessary to enlarge many titles to cover similar laws differently phrased. These tities sometimes differ from those familiarly found in indexes and our outline has been criticised on this account. To illustrate: Conventional anti-trust laws were first indexed under "Trusts and Monopolies." When it became necessary to index such extention of these laws as the Alabama act prohibiting "monopolies, profiteering, hoarding, cornering or storing" this title as no longer descriptive. An Illinois law which prohibits any person destroying food for the purpose of influencing the market makes no reference to the creation of trusts but obviously joins on to the Alabama law. We now index all such legislation under "Corrupt Trade Practices." This title is probably not in use in any other law index, but when we have such inquires as a recent one for all laws attempting to control business frauds, it proves very

* Presented at the Twenty-third annual meeting at French Lick, Ind., May 29-30, 1928.

useful. Those who are interested in anti-trust laws will find a cross-reference from that title, and the entries under Corrupt Trade Practices will show which acts are technically anti-trust laws.

We originally had the index titles "Osteopathy," "Chiropractic," "Poropathy," "Natureopathy," "Mechanotherapy," "Electrotherapy," "Hydrotherapy," "Physiotherapy," etc. We had acts prescribing regulations for the treatment of human ailments, for treatment of the sick, and of drugless healing. We then found that one state wiped out all of these distinctions and prescribed regulations for the practice of medicine and surgery as one class, and of treating human ailments without the use of drugs as another. We followed their lead and now index all such legislation under "Medicine and Surgery" and "Therapeutics, Non-Medical."

We have struggled with the many names applied to organizations similar to the Morris plan banks and have finally decided to index them under "Small Loan Banks." Here again, our title is different from any of those in use but attempts to encompass them all. Clark and Chase, in their study of building and loan associations, remark: "Associations operating on the building and loan plan are not always called by the same title. The great diversity of names causes much confusion among people unfamiliar with association business." The confusion for the bewildered indexer will be appreciated when you read the 143 names in use which they then proceed to list. In this case the diversity has at least crystalized into a universally accepted title, which we can adopt and force the others within it. When we are dealing with organizations still in a state of flux, we have a problem not easy of solution. There are several recent laws, vague in terms, apparently intended to hit the corporations which buy promissory notes held by concerns retailing on the installment plan. Mississippi proposes to tax corporations dealing in notes or other forms of indebtedness, secured by liens, and calls them commercial credit companies. Louisiana taxes persons engaged in purchasing, selling, trading in or lending on notes secured by chattel mortgages, vendors', contractors', mechanics' or other statutory liens, and calls them finance or security companies. Whether I am right in assuming that in the popular mind they are collection agencies, and so indexing them, I do not know, but I am quite sure they are not what is popularly understood by finance or security company.

With cross-references from catch terms in use in the various states to the titles used, I believe headings descriptive of the general object of the legislation are more useful, however unfamiliar, than terms that are catch titles in one state, but quite as unfamiliar as our titles in another. In other words, we must prepare our index for all of the states and territories, and not for any one particular state.

There has been considerable criticism of our title "Local Government." An analysis of the confusion in the indexing of the legislation of a single state where municipal regulations are subdivided will illustrate the problem of attempting such subdivision for all of the states. In the Pennsylvania statutes the classification "Boroughs and Incorporated Towns" is used, but a provision relating exclusively to the power of boroughs to construct bridges is indexed under "Counties and Townships." In addition to these titles they use "Cities," "Cities of the First Class," "Cities of the Second Class," "Cities of the Third Class,"

and "Municipal Corporations." Under "Cities" are provisions concerning those of special classes, and one concerning the power of boroughs or townships to become cities. Under "Counties and Townships" is an act concerning the powers of any city, borough or township. Under such conditions, the searcher has no alternative but to read through all such titles. We index constantly recurring statutes relating to any "city, county, borough, township or other municipality or incorporated district." Considering the material with which we have to deal, I am convinced that seeking the least common denominator is the simplest and best policy, however foreign the result may seem. Under the old divisions, such as those used in Pennsylvania, all such entries must be read and it is easier to read through them in one place than in six.

Our theory of the common denominator has occasioned most of the criticism of the outline. Objection has been made to indexing billboards under Advertising. One state will prohibit placing advertising signs along highways, another billboards. Not all advertising signs are billboards. Should these very similar laws be indexed in different places? I think not. If not, "Advertising" is surely a more legitimate place for both laws than "Billboards." Similarly, objection has been raised to indexing zoning under city planning. The phraseology of the Delaware zoning law is practically identical with that of the Indiana city planning law. Separation of these laws would, in my opinion, be bad indexing; duplication is impossible if we are to keep within practical limits. It seems to me that the inclusion of both under the broader title is the only alternative. Furthermore, we find that most people using the index are in search of abstract ideas rather than specific statutes, and for them the generalization in titles is very helpful.

There has been objection to our plan for indexing court procedure. Confessedly we are floundering in this field, as it has been superficially treated in the past, owing to the fact that it is of little importance from the standpoint of Federal legislative reference work. It has been suggested that all of the sub-headings we use under the title "Actions at Law" should be separate titles. It seems to me, that in a subject so hopeless interwoven as this there is a distinct advantage in proximity of subject matter. At best, the dividing line between civil procedure and pleading is extremely difficult to draw, and there is an advantage in having such material under a main heading, rather than in widely separated parts of the alphabet. Granting there is little apparent logic in treating certain titles as separate subjects and others as sub-headings, the outline has been planned on the basis of the acts actually handled, regardless of academic logic. It is obvious that in looking at it from a distance "Evidence and Witnesses" seems much more nearly an integral part of the main title than "Judges" or "Juries," but as a matter of fact the laws on evidence and witnesses stand out much more distinct and separable. Fees of witnesses or the law of confidential communications are concrete things to handle, but I am at a loss to decide whether the challenge of a judge for bias or instructions to a jury in civil cases are more properly placed under "Civil Procedure" or "Judges," or "Juries" as the case may be. I therefore have treated evidence as a separate topic and have made "Judges" and "Juries" sub-titles under a main title which covers all of the debatable land.

We are also uncertain of the best way to handle routine matters of personnel administration. These acts have hitherto been excluded, and we still feel that any one interested in the substantive law will count their inclusion mere "clutter." The people who are interested in individual appointments, salaries, oaths of office, etc., will be those interested in state organization as such. It is therefore proposed that we still exclude these acts from the index proper and prepare a supplemental digest, somewhat on the lines of the American Bar Association digest of state legislation, giving these laws under special administrative headings. In tentative work along this line I have used the Description of the Organization and Functions of the State of New York, prepared by the Department of Efficiency and Economy for the constitutional convention of 1915 as a guide in determining classification. Presumably the interest in these laws is from the standpoint of administrative reorganization, and we will attempt to deal with them from this point of view.

The attempts of state legislatures to keep pace with the ever changing panorama of modern American life furnish occasional variation from the monotony of bridge acts and game laws. Some years ago an enterprising Texas legislator proposed to mediate between the ranchmen and automobilists by requiring that all cattle wear tail lights. Few people appreciate the fact that the dry and dusty pages of statute law are an accurate picture of contemporary social life and carry many tales tinged with "local color." In old congested areas it is found necessary to establish state cemeteries to remedy a situation where skyscrapers are being built upon sacred ancestral bones, and where "many men now living have as boys seen coffins protruding with their ghastly remains where are now public streets and solid blocks of residences." From the lonely stretches of Wyoming comes the other side of the picture, where it is necessary to enact penal laws to keep men, isolated far from their fellows, from abandoning sheep on the open range and seeking the bright lights. Sometimes, however, the local colors seem to get mixed. Tennessee succeeded in breaking into front page publicity recently through the efforts of the legislature, and apparently Arkansas is preparing in great haste to come out of obscurity and enter into competition with New Jersey in the already overcrowded field of high power, "sex appeal" murder trials. An act of 1927 declares: "Whereas, murder of wives and husbands is likely to occur at any time, under various provocation, and it being necessary to guard against such homicides immediately, and this act being necessary for the immediate preservation of public peace, health and safety, an emergency is declared."

We have learned long ago that it is impossible to prepare an index that will lead the way for all inquirers in state laws. An effort has been made to bring out social and economic tendencies which most indexes do not show, but there are many times when we must acknowledge defeat. A recent applicant on quest of advertising material for soap manufacturers wanted all laws on sanitation to which soap was the answer. I had to admit that "Use of Soap" was one extraordinary heading which had not yet occurred to me.

Some time ago an ardent disciple of Mencken's came with much gusto demanding the recent laws infringing personal liberty. He was going to write an article showing the enormous recent increase in legislative shackles being

imposed upon us. I gave him anti-cigarette laws, but since all of those not limited to minors have recently been repealed, he decided that the remaining ones were proper legislation and did not serve his purpose. I gave him red flag laws and sedition laws and he indignantly assured me that they were restrictions on license and not liberty. I showed him the Ohio law imposing a severe penalty on any person who "being a married man represents himself to be unmarried and repeatedly calls on or keeps company with a female upon such representation." He blushed a deep vermillion and stammered "Well—that—that's all right." I had to assure him that he was too good an exponent of law and order for me to help him and to refer him back to Mr. Mencken, or less modern laws, or more liberal countries, from either of which source I was sure he could find what he sought.

THE LEGISLATION OF VERMONT*

By HARRISON J. CONANT, State Librarian of Vermont.

During the fifteen years, 1777-1791, Vermont was an independent republic. The origin of her independence lies in a boundary dispute mainly between New Hampshire and New York. New Hampshire claimed jurisdiction to a line twenty miles east of the Hudson River, or as far west as the Western boundary of Massachusetts. New York claimed to the West bank of the Connecticut River.

During the years 1749 to 1764, Governor Wentworth of New Hampshire issued charters to one hundred and thirty towns in the disputed territory. On July 20, 1764 the boundary between New York and New Hampshire was fixed by decree of the King in Council on the west bank of the Connecticut River. Up to this time the de facto government of the region had been that of New Hampshire although Governor Clinton of New York had made some protest to Governor Wentworth against the claims of New Hampshire. In the popular opinion of the settlers, therefore, this decision was regarded and spoken of as annexing Vermont to New York. New York, however, regarded the decision as sustaining her prior claims to the territory and construed it as nullifying all of the grants of land made by New Hampshire. The settlers under the New Hampshire grants were thus in a position where they must purchase confirming grants from New York or lose their lands. Some of the settlers acquiesced and obtained New York grants. Others refused and appealed to the King for relief. On July 24, 1767, the King in Council issued an order enjoining New York from making grants in Vermont until further consideration could be had. New York, however, continued to issue grants in violation of this order and began proceedings in the courts to dispossess those settlers who held under New Hampshire grants. Many of the New York officers were met by armed resistance in their attempts to serve the writs of ejectment. Thus arose the "Green Mountain Boys" led by Ethan Allen.

Vermont was now virtually in rebellion from New York and at various conventions of the people held in 1775 and 1776, action was taken looking toward setting up an independent government. This was formally done at a

* Presented at the Twenty-third annual meeting at French Lick, Ind., May 29-30, 1928.

convention held January 16, 1777 under the name of New Connecticut. A council of safety was appointed with unlimited powers but which concerned itself mainly with exigencies of the war. The convention met again on June 4, 1777 when the name Vermont was given to the State, and measures adopted to call a convention for adopting a constitution. This convention assembled on July 2, 1777 and adopted a constitution under which an election of officers took place March 3, 1778 and the first legislature met March 12, 1778.

The actions of these various conventions and councils prior to the organization of the Legislature are part of the legislation of the State, but exist only in fragmentary form. (See Records of the Council of Safety and Governor and Council, edited by E. P. Walton 1873.)

The first constitution of Vermont is in substance the constitution of Pennsylvania of 1776. It is of interest to note that Vermont refused to follow either New York or New Hampshire, both of which states had at that time adopted constitutions. One reason for this action was that Thomas Young of Philadelphia who had been a strong advocate of the Pennsylvania constitution was a friend of Ethan Allen and had interested himself in the Vermont situation.

Under this constitution the legislative power was vested in a House of Representatives, each town being entitled to one or two representatives according to the number of taxpayers. After 1784, each town was entitled to only one representative irrespective of its size and this provision of the Constitution still exists in spite of many efforts to change it. There was an executive council consisting of the Governor, Lieutenant Governor and twelve members which also exercised considerable legislative power. This council existed until 1836 when it was supplanted by a Senate. There was a provision in the constitution of 1777 that no act should become law until the next session of the Legislature following its introduction, except temporary acts in case of sudden necessity. The result of this was that the early laws were declared temporary and a blanket act passed continuing in force all acts until the rising of the Legislature at their next regular session. A Council of Censors was established to be elected every seven years and with the duty to inquire as to whether the constitution had been violated. They also had power to propose amendments to the constitution and to call a Convention to act upon the same. This provision persisted until 1870. Since then amendments to the constitution are proposed by the Senate every ten years. The next proposals will be made in 1931.

The reports of the various Councils of Censors form some of the most interesting documents relating to constitutional history and law. By the state constitution this body was charged with the duty to inquire whether the constitution had been preserved inviolate in every part, and whether the legislative and executive branches of the government had performed their duties as guardians of the people; or assumed to themselves or exercised other or greater powers than they were entitled to by the constitution. The constitutional theory of that time considered the power of the Legislature unlimited and did not recognize the principle that the judiciary could adjudge an act of the Legislature void as repugnant to the constitution. Even the powers of this Council especially established for the purpose of guarding against unconstitutional legislation were merely advisory. Their first report gives numerous

instances of unconstitutional laws but the force of these laws was recognized until the legislature repealed them.

Further light is thrown on the constitutional theory of the 18th century by one of the first acts of the Legislature of Vermont passed in 1779 which enacted "that the constitution of this State, as established by general convention held at Windsor, etc. . . . shall be forever considered, held, and maintained as part of the laws of this State." The same law was reenacted in the revision of 1782 and also (as to the constitution of 1786) in 1787. It was omitted from the revision of 1797, by which time constitutional law had developed beyond considering that the constitution which was the fundamental law of the state and the charter of legislative existence and authority needed the approval of the legislature to make it valid. (See Memoir of Thomas Chittenden by Daniel Chipman)

The exercise of an independent government by Vermont was not without opposition especially from New York and numerous efforts were made to have Congress intervene. However, Vermont continued to exercise full rights of sovereignity until she was admitted into the Union, March 4, 1791.

During this period from 1777 to 1791, Vermont twice extended her boundary. On June 11, 1778, after a referendum, she annexed sixteen towns east of the Connecticut River in New Hampshire, but rescinded this action on February 12, 1779. On February 14, 1781, she annexed all of New Hampshire west of the so-called Mason line (60 miles from the sea) and all of New York north of Massachusetts and east of the Hudson River. Representatives from towns in this territory took their seats in the Vermont Legislature at the April and June, 1781 sessions. Upon the advice of George Washington, Vermont relinquished her claims to this added territory on February 23, 1782.

There were three sessions of the first Legislature in 1778, March, June and October. None of the Acts of this year exist even in manuscript, although the Journals exist and have been recently reprinted by the Secretary of State (1924.)

Some acts of the first Legislature were enacted by reference, using the words "as it stands in the Conn. law book." Many of the early laws were copied word for word from the laws of Connecticut. In seeking models for laws, it was natural for Vermont to turn to Connecticut, as many of the leading men of the State had formerly lived there.

A complete list of the sessions of the Legislature is given in recent issues of the Vermont Legislative Directory. There was a special session in November 1927, called on account of the flood emergency. The list of sessions in the Massachusetts State Library Handlist of American Statute Law is correct except that the sessions of January, 1782, February, 1783, and October, 1784 are omitted (except by reference to Slade's reprint). Also there was no separate March session 1787, the February session adjourning March 10, 1787.

Original editions of the printed acts prior to 1797 are very scarce and no complete set is in existence.

There have been several reprints of the laws of various early sessions. Slade's State Papers (1823) contains the Acts of 1779 to 1786, omitting, however, quite a few of the acts of minor importance. Some of these omitted acts are reprinted either in full or by title in the Appendix to the Revision of 1797.

The Revision of 1787 and the subsequent acts through 1791 were reprinted by Haswell in 1791 who secured legislation making the edition admissible in evidence. (Oct. 27, 1791). He also reprinted the acts of 1792-1795 under similar authority. (Oct. 27, 1795.) These Haswell reprints also lack some acts appearing in the original editions.

There have been later reprints, some in facsimile, by the Burlington Book Company and the Statute Law Book Company, covering thirteen (13) sessions of the period from 1779 to 1790.

Revised Statutes

It is customary to appoint at irregular intervals of ten or more years commissioners to revise the public acts consolidating them into a proposed statute which is enacted by the Legislature. After the adjournment of the session this statute is edited by commissioners appointed for that purpose who incorporate in it the public acts passed at the same session. The revision commissioners submit with the proposed revision a report calling attention in detail to all material changes made by them. The latest revision which is now in force is known as "The General Laws of Vermont, 1917."

A complete history of the various revisions is given in the preface to the revision of 1906 with some additions and corrections by Justice Powers of the Vermont Supreme Court which are printed in Part I of the Commissioner's Report on this same revision.

The first revision or more accurately, the original compilation was passed at the February session 1779, and as previously intimated, was virtually copied from the Connecticut Laws. As these Acts were passed in a session lasting only sixteen days, it is probable that they had been prepared previously to the session. As there is no record of the appointment of a committee, it is possible that they were prepared by a Committee of the Executive Council. It is known that this practice had already been followed in the case of some Acts. (Governor and Council, March 26, 1778 and House Journals same date).

The next revision (dated 1782) was made by a committee of five appointed by joint ballot of the House and Governor and Council on June 20, 1781. This committee submitted the revision in installments during the following sessions of the Legislature until March 1784 and their revision was printed in three installments in 1783 and 1784. This revision contains only twenty-six (26) Acts and is not a complete revision of the then existing laws. It is possible that there were other installments about which nothing is known.

The subsequent revisions are discussed as previously stated in the preface to the Revision of 1906. A new revision has not yet been provided for.

FUNDAMENTAL MATERIAL FOR THE LAW SCHOOL LIBRARY, WITH PARTICULAR REFERENCE TO THE LIBRARY OF 7500 TO 15000 VOLUMES*

By Miss Helen S. Moylan, University of Iowa Law Library

The subject of this paper has been suggested by the apparent need for some definite statements on material that every law school library should have available for the use of its faculty and students.[1] It is an attempt to set forth

* Presented at the Twenty-third annual meeting at French Lick, Ind., May 29-30, 1928.

some standards in regard to the contents of the law school library, which although well-known to librarians of good-sized collections, have not been, apparently, set down for the benefit of the inexperienced librarian who is faced with the task of building up a library and who as likely as not is isolated from other law libraries.

It was thirty-four years ago, when the American Bar Association was organizing its section on Legal Education, that Governor Simeon E. Baldwin of Yale read a paper on "Law School Libraries and How to Use Them," before that section. Most of his suggestions still retain their forcefulness, so little do the basic elements of the law library change. He said, in part:

> "If I were to commence the collection of a Law School library . . . I would begin first with the statutes, reports and digests of the State in which the School is, and to which, therefore, a large portion of the students will always belong. Next should come those of the United States, beginning with the purchase of the Supreme Court reports."

That is just as sound advice today as it was then. It is curious, however, to read that "to maintain a really great library, one, say, of thirty-thousand volumes or more, where purchases are freely made of institutional works illustrating all the great systems of administrative law, and the general history of and principles of jurisprudence, from five to ten thousand dollars a year may easily and wisely be spent. . ." No one would any longer speak of a library of 30,000 volumes as "really great," nor is it any longer possible to buy "freely" of works illustrating all the great systems of law with even ten thousand dollars a year.

The next step in the direction of outlining the contents of the law school library was taken by the Association of American Law Schools. This organization has been the chief force back of the movement to see that the law school has an adequate library. For twenty-eight years it has been working to bring about higher professional standards in law schools, as has also the American Bar Association. The Law School Association, at its organization in 1900, provided in its articles of association, article 6, section 4, that:

> "It [the law school] shall own, or have convenient access to, during all regular library hours, a library containing the reports of the State in which the school is located and of the United States Supreme Court."

It will be noted that this provision coincides almost exactly with the recommendation of Governor Baldwin made six years before.

In 1905 it was moved that this section be amended so as to include "the recent and current reports of the federal courts of the United States, and of the courts of last resort in all the states; the revised statutes of the United States, the English Chancery and common law reports and at least 300 volumes of standard text books." These recommendations were ahead of their time, apparently, because they were opposed and the matter was not taken up again until 1912. In that year the Executive Committee recommended an amendment to read:

"4. It shall own a law library of not less than 5000 volumes," and this recommendation was adopted by the Association. In the discussion on this amendment it was argued that some more definite requirements should be made as to what this number of volumes should include, but it was decided to leave the application of the amendment to the Executive Committee. During the

next twelve years there is no record in the Minutes of any discussion as to the contents or size of school libraries, although in his paper on the Classification of Law Schools, read before the Association in 1920, Mr. Beale suggests that the library of a Class A school should be set at 25,000 volumes, adding, however, that at the time was impracticable and the minimum should be set at 15,000 volumes.

In 1924 the section was amended again so as to read:

"It shall own a law library of not less than 5000 volumes, well selected and properly housed and administered for the use of its students."

At this meeting the desirability of making an increase in the number of books required was brought up, but the suggestion was not acted upon until the next year's meeting. At that time the library requirement was changed to read:

"Commencing in September, 1927, it shall own a law library of not less than 7500 volumes, which shall be so housed and administered as to be readily available for use by students and faculty. For additions to the library in the way of continuations and otherwise there shall be spent—over any period of five years—at least seventy-five hundred dollars, of which at least one thousand dollars shall be expended each year."

In drawing up the last amendment the Executive Committee of the Association proposed that certain definite recommendations be made as to what the 7500 volumes should include. These recommendations were not included in the amendment as passed in 1925, but were brought up again in 1927 and approved by the Association at that time. While they are not binding on law schools, they are taken by the Executive Committee as a measuring rod for determining whether or not a school's library is up to the standard required for admission to the Association. Because of this fact and because they give a well-balanced view of what the minimum law-school library should contain, they have been adopted as the basis of selection for the library of 7500 volumes treated of in this paper. They are as follows:

"It is recommended that in a law library of not less than seventy-five hundred volumes, the following should be included:

"1. The published reports of decisions of the state in which the school is located, together with commonly used editions of the statutes and digests.

"2. The published reports of decisions of the courts of last resort in at least one-half the states of the United States with reasonably up-to-date editions of statutes.

"3. The published reports of the decisions of the United States Supreme Court with the generally used editions of federal statutes and digests.

"4. The National Reporter System complete.

"5. Leading up-to-date publications in the way of general digests, encyclopedias, and treatises of accepted worth.

"6. At least six legal periodicals of recognized worth, complete with current numbers.

"7. The English reports covered by the so-called reprint, together with the law reports to date." [2]

These recommendations will be taken up one by one. The first one, specifying that the library contain the local state reports and commonly used editions of statutes and digests is a clear statement of the absolutely necessary foundation for any law library. It is difficult to determine how many volumes this would require in each state. Speaking for Iowa, it would require 208 volumes

of reports and about 9 volumes of statutes and digests to comply literally. This number permits only the last compilation of statutes (1927) and the current digest. This nucleus should be increased as rapidly as possible by adding all the earlier compilations of statutes and the session of laws of the state so far as they are available. Later all that concerns the law of the state in any way, such as the legislative journals, workmen's compensation and railroad commission reports, attorney-general's opinions, and all local practice books. These latter are frequently difficult to get track of as they are published by the authors or by small presses which do not advertise outside their immediate locality. The local citations books are important items which should be early acquired.

A question of importance which arises here is the matter of duplication of material. It is obvious that one set of reports or one code will not supply the needs of one or two hundred students. Even where funds are limited and the school small, it would be necessary to supply at least one extra set of reports and several copies of the latest compilation of the statutes of the states. An average of one set of reports to every fifty students or major portion thereof would seem to be a satisfactory basis for duplication of the reports of the state in which the school is located. In addition many schools provide a set of local reports for every faculty office and this is highly desirable whenever possible. These necessary duplications are, it is understood, allowed to be counted toward making up the minimum of 7500 volumes by the Association of American Law Schools, but they will not be further considered in this paper. Counting two sets of reports and one set of statutes and digests and the local citator in three volumes, 428 volumes are now provided.

The second recommendation, namely reports of at least one-half of the states of the United States, with reasonably up-to-date editions of the statutes, should be discussed in connection with the fourth recommendation, a complete set of the National Reporter System, as one supplements the other. If the library has all of the National Reporter System it has the greater part of the decisions of two-fifths of the states, and it makes the problem of selection easier. The National Reporter cannot take the place of the official reports but it is of tremendous assistance to the library with limited funds because it furnishes, at a minimum of cost, all the decisions of the courts of last resort of the various states and of the United States, as well as the lower federal courts and some of the other inferior courts. A complete file of the reports of the courts of last resort would make more than 7800 volumes and would be out of the question for a small library, both in first cost and upkeep. The second recommendation, that of the reports of at least half the states, is not very specific. The question at once arises as to which twenty-four of the forty-eight states should be included in the library. This is a question which each school must answer for itself, but one or two guiding principles can be suggested. For instance, what reports are most cited as authorities by the state supreme court? Are they the reports of the neighboring states, or the older jurisdictions, such as Massachusetts, Virginia and New York? Again, the reports of several of the younger states are included in their entirety in the Northwestern and Pacific Reporters, and might it not be well therefore to postpone the purchase of them until a later time? The difficulty of obtaining certain sets of reports is another matter which will influence the decision as to the states to be chosen.

The most practical way to fulfill the requirement of having the decisions of the courts of last resort of at least one-half of the states is by buying the official reports up to the beginning of the Reporter System. Even in this way it is a fairly expensive process as some of the early reports are scarce and difficult to find. In the chart at the end of this article will be found a compilation showing the number of volumes needed to bring up to the appropriate reporter the reports of the courts of last resort of each state, and one can easily calculate from this the number of volumes one would have when the choice of state is made. The total number of volumes in the National Reporter System, exclusive of digests, is 1925 (in May, 1928). The total number of volumes of reports of state courts of last resort needed to bring them up to where their respective Reporters begin is 2747. This figure includes the reports of the Philippine Islands, Hawaii and Porto Rico, which are not in the Reporter System, and the early volumes of the District of Columbia reports. It does not include the early reports of any of the lower courts even when the later ones are included in the Reporter System. Half the above figure, that is 1374, would be our minimum. As a matter of fact, it happens that one very good combination of reports comes very close to this estimate. Should it be decided that the most important states for the immediate purposes of the library were those contained in the Northwestern, Northeastern, and Atlantic Reporters, it would be found that the number of volumes of state reports needed to complete these series would amount to 1356.

As a necessary corollary of the reports the library must have the statutes of the states represented. So many decisions are interpretative of statutes or deal with facts arising out of violation of state laws that convenient reference to the laws is essential to their understanding. The purchase of revisions of statutes and session laws presents many problems. In the first place they are expensive and one is confronted at the outset with the question of how to obtain with the money at one's disposal the most comprehensive and useful selection. A plan which has been followed by many libraries and one which seems the best fitted for the purposes of present usefulness, and one which offers at the same time a solid foundation for future purchases, is to buy first the latest compilation or revision of the laws of a state and the session laws, containing the public acts from the date of the revision. In this way there are available the latest authoritative legislative enactments and these are the ones which are most in demand. In the chart at the end of this paper will be found a list of the latest statutory compilations followed by a column showing how many volumes of session laws, containing the public acts, will be necessary to bring these statutes down to date, and showing, too, whether the legislature meet in the odd or even years, and whether there have been extra sessions since the date of the compilation. If a library is to make the purchase of a considerable number of these statutes and session laws at one time, it would probably be the wisest course to put the matter in the hands of a reliable agent, for the sources of this material are so various and, especially where laws must be purchased directly from the state, the methods of payment so complicated, that a great deal of correspondence is required and considerable time is apt to be lost in finding out just where and how to obtain what one wants. While an agent makes a small service charge, say fifty cents a volume, he keeps track

of the issue of new session laws, which are quite irregular, has the information necessary to secure them promptly, and, what is frequently important from the point of view of a state institution, does not require advance payment on items which can be obtained only in that way if ordered direct from state publishers. A check can be kept on the up-to-dateness of his service through the lists in the Index to Legal Periodicals which give information as to the latest session laws.

Should the library decide to follow the plan mentioned, that is, to purchase the latest compilations of statutes and session laws to date, it will find that the great majority of the states have revised or compiled their laws since 1919. In fact forty-two states have compilations dating from 1919 or later and many of them have kept these down to date with cumulative supplements. It is obvious, therefore, that the number of session laws required under this plan is at a minimum. The number of volumes represented by a complete collection of the latest revisions and supplementary session laws down to date is approximately 313. In cases where private and special laws are published separately from the public acts, they are not included in this enumeration.

The third recommendation, the reports of the United States Supreme Court and a generally used edition of federal statutes and a digest, is now to be taken up. There are three editions of the United States Supreme Court Reports to be considered, the official, the Lawyers' Edition, and the Supreme Court Reporter. Since the Supreme Court Reporter has already been provided for by including the complete Reporter System in the library, there is no need to discuss this set. Complete sets of the official edition in unabridged form are very expensive, and it would seem more practical, therefore, to buy the Lawyers' Edition which includes several volumes in one book and has the advantage of the official paging, and annotations. Another possible arrangement, but one not so much to be recommended, as a first step, is the purchase of the early reports in the Curtis and Miller condensed form following up with the single volumes of the official edition. These condensed reports give the entire decision in each case, but omit the arguments of counsel contained in the original edition and for this reason are not so desirable. There has recently been put on the market a reprint of the official edition of the United States Supreme Court Reports combining several official volumes in one book, as does the Lawyers' Edition, and this also might be taken into consideration before purchasing. However, the annotated Lawyers' Edition would seem to be the most useful set to buy in the beginning, for it will be wanted anyway when the library grows larger, and one will be in a position to buy the official edition when more funds are available. Both the Supreme Court Reporter and the Lawyers' Edition of the Supreme Court Reports issue the current reports in advance sheets. There are now 274 volumes of United States Supreme Court Reports.

The most inclusive and up to date digest of United States Reports is that now being published by the Lawyers' Cooperative Publishing Company. It covers all the volumes of the reports, whereas the Supreme Court Reporter Digest covers only the decisions from volume 106 (1882), the first volume reported by the Supreme Court Reporter. This will be complete in ten volumes.

Since the laws of the United States have been recently codified the last

part of the third recommendation, namely, a generally used edition of the statutes, is easily taken care of. The Code of Laws of the United States, 1925, is published by the Government Printing Office as part 1 of volume 44 of the Statutes at Large, and to supplement it the other two parts of volume 44, part 2 containing the public laws, and part 3 containing the treaties, etc., should be purchased at the same time. The Code is issued also in annotated form, and an annotated edition would be a very valuable addition to the library. One of the annotated codes is Mason's published in three volumes and kept to date with pamphlet supplements, the other is that issued by the West Publishing Company in conjunction with the Edward Thompson Company. This is to be in sixty handy sized volumes and is also kept down to date with cumulative pamphlet service. The Statutes at Large from their beginning should be obtained as soon as possible after the minimum requirements are met. The third requirement gives a minimum of 287 volumes, with the possibility of sixty more if an annotated edition of the Code is purchased and a further possible early addition of 56 volumes of Statutes at Large.

Since the fourth recommendation, the complete National Reporter System, has already been considered in connection with the second recommendation, the next to be taken up is the fifth, that providing that the library be equipped with the leading up to date publications in the way of general digests, encyclopedias, and treatises. This specification is perhaps open to more difference of opinion than any of the others. The following suggestions are offered as to what would appear to be the most generally useful publications in this field, but it is likely that libraries will differ as to the relative value of some for their own use. The first thing that suggests itself under the classification "general digests" is the American Digest, since this digests all the reports of the United States and state courts from the beginning right down to date. It is an indispensable set for any library. It is, of course, expensive as anything so comprehensive in its scope must be, but it is the only complete digest for the United States and its value cannot be too greatly stressed. It consists of 127 volumes plus the volumes of the Third Decennial Digest now being issued.

For the English reports there are two digests to be considered. Mews' Digest of English Case Law, now in its second edition, and the English and Empire Digest, in course of publication. The latter includes British Colonial, Scotch and Irish reports as well as English reports and so is the more comprehensive of the two, but since only the English reports are included in this small library, Mews' Digest would seem to be the more practical purchase as it is limited to English decisions. It is complete in 24 volumes and is kept down to date with an annual volume.

The words "legal encyclopedias" bring to mind the Corpus-Juris-Cyc system and Ruling Case Law. Earlier encyclopedias, like the American and English Encyclopedia of Law, are largely out of date and while useful for the period covered, would not be desirable purchases for a small library. Of the two encyclopedias mentioned, the Corpus-Juris-Cyc is the more comprehensive, but the Ruling Case Law is also a very valuable work, and both are kept up to date with supplements. Corpus-Juris-Cyc numbers 63 volumes and Ruling Case Law 34. Both should be in the library. The outstanding English encyclopedia is Halsbury's Laws of England and this should also be included in the

library. It is complete in 31 volumes and has an annual supplement. The total for encyclopedias and digests suggested above is 279 volumes.

The importance of legal dictionaries must not be overlooked. Of course, Bouvier's Law Dictionary, in the editions published by the West Publishing Company, is the most complete. One volume dictionaries include Black's and the Cyclopedic, and Byrne's. Every library, it is assumed, will have a standard English dictionary, a Latin dictionary, and a good general encyclopedia. This might be estimated at about 20 volumes.

When it comes to making a selection of treatises, one is, indeed, on debatable ground. In order to provide some guide to this extensive field a list of some 150 treatises is appended to this paper.[3] It is not intended by any means as a complete list of all the worth-while treatises on any subject, but merely offers a guide to some of the more important and standard works. This list is based on the courses offered by the average law school and it is believed that it will be found to contain the treatises most useful to faculty and students. It is not such a list as would be made up, perhaps, for a library devoted to the needs of the practitioner, although among the books suggested are the fundamental treatises in the subjects named. The difference lies in the emphasis given to books expounding the principles of law rather than providing a digest of cases on a given subject. Although the list is limited to about 157 titles volumes, it represents a minimum of 300 volumes of treatises.

The sixth recommendation is "six legal periodicals, complete with indexes." In order to find out if there was any consensus of opinion on the most used periodicals, letters were sent to seven law school libraries,[4] located in different sections of the country, and they were asked to give a list of the ten most used periodicals in their libraries. A similiar list was made up at the University of Iowa Law Library. All the libraries responded and the results are very interesting. There was no trouble in choosing the five most popular periodicals because they appeared on every list. They were Harvard, Yale, Columbia, Michigan, and Illinois Law Reviews. Seven of the eight lists contained the Pennsylvania and California Law Reviews, and since Pennsylvania rated higher on each list than California, it would seem to be entitled to the sixth place. On four of the lists were the laws reviews of Iowa, Minnesota and Cornell; Virginia appeared on three, and North Carolina, Texas and the Law Quarterly Review on two. It is interesting to note that all of these, except the Law Quarterly Review, are the publications of law schools. From the reports sent in a list of the ten most used legal periodicals was made up, with the reviews arranged in the order of their popularity. Where there was a local publication, that as a rule was given first place. After that the order is as follows: Harvard Law Review, Yale Law Journal, Columbia Law Review, Michigan Law Review, Illinois Law Review, Pennsylvania Law Review, California Law Review, Iowa Law Review and Minnesota Law Review. The Harvard Law Review is now in its forty-first year, and has two volumes of indices; Yale is in its 37th volume, Columbia in its 28th, Michigan in its 26th, Illinois in its 22nd, Pennsylvania in its 76th (this includes the American Law Register, the Predecessor of the Pennsylvania Law Review), California is in its 16th volume, Iowa in its 13th, and Minnesota in its 12th, making a total of 271 volumes, not counting indexes. Attention must be called to the fact that the earlier

volumes of some of these periodicals are very scarce and difficult to obtain, and they should therefore be purchased whenever the opportunity presents itself. In connection with this matter of legal periodicals, it might be well to mention that their importance as reference works is on the increase, for a considerable number of the new textbooks are citing them for further discussions of the subjects treated and the courts often call attention to articles in point. It is a well accepted fact in fields of study outside the law that the latest and most up to date discussions of subjects which are in a state of flux can be found only in periodical literature, and this condition is equally true of the law. These facts and the increasing scarcity of complete sets of many of these periodicals make it extremely important that they be among the early purchases of a law school library.

Essential to the best use of the periodicals are periodical indices. The Index to Legal Periodical Literature was originally compiled by Leonard A. Jones, volume one being published in 1888 and volume two in 1899, both together covering periodical legal literature down to 1899. These volumes were continued by Mr. Frank E. Chipman. His first volume, or the third volume of the series, covering the years 1898-1908, was published in 1919, and the second covering the years 1908-1922, aws published in 1924. In addition to these four volumes, the American Association of Law Libraries has published an annual index since 1908. This is also called the Index to Legal Periodicals and is published in connection with the Law Library Journal. It is issued quarterly and the January issue of each year cumulates all the indexed material of the three preceding numbers. It is now in its twenty-first volume. The business manager for the Association is the H. W. Wilson Company of New York. As mentioned above, these indexes are essential in the law library as they make accessible all the valuable information contained in periodical legal literature, including besides the law reviews numerous bar association reports.

The last of the recommended groups is the English Reports Reprint and the Law Reports from 1865 to date. The English Reports Reprint is a verbatim reprint, annotated, of the English reports from 1220 to 1865, the latter date being the time of the commencement of the publication of the Law Reports under the supervision of the Council of Law Reporting. The Reprint is bound in 171 books but represents a total of 785 volumes of reports. It retains the paging of the original volumes and will be counted as 785 volumes in this paper, as that is the allowance made for it by the Executive Committee of the Association of American Law Schools. While there are several series of English Reports from 1865 to date, and none of them is official, yet the purchase of the series issued by the Council of Law Reporting and known as the Law Reports is recommended as a first purchase because it is the most nearly standard of the current sets since "the reporters are appointed only with the approval of the judges concerned, and all the reports of cases are revised by the judges before publication."[1] A complete set of these Law Reports from 1865 to 1927, inclusive, contains 472 volumes.

Summarising what has been said above, it appears that the number of volumes so far provided is 6321. This leaves about 1200 volumes still to be chosen to complete the minimum requirement of 7500.

One of the first sets which the library should purchase after taking care

of the specifications given above is the complete Lawyers' Reports Annotated, old and new series. A complete set amounts to 163 volumes. The current annotated case series, the American Law Reports, is also recommended as an early purchase. It now consists of 56 volumes. Another important set is the set of Federal Cases published in 31 volumes by the West Publishing Company. This is a complete compilation of the older circuit court and district court cases down to the beginning of the Federal Reporter. With this set in the library in addition to the United States Supreme Court and Federal Reporter recommended above, a complete file of the United States Supreme and inferior federal reports is available for use.

The remaining 950 or so volumes of the minimum standard might well be made up of further sets of reports of the state courts of final jurisdiction, bringing as many as possible of the state reports down to the beginning of the Reporter System.

The equipment of the librarian's office with all possible bibliographical aids is an important consideration. Among the most important reference books the librarian should have at hand are the following: the Catalogue of the Harvard Law Library, Soule's Lawyer's Reference Manual, Hupper's Tentative List of Subject Headings for Law Libraries (issued by the Library of Congress in 1911), the Massachusetts State Handlist of Statute Law, Small's Checklist of Bar Association Reports, Sweet and Maxwell's Complete List of British and Colonial Law Reports, and their Legal Bibliography, of which volume 1 only is issued at the present time, Hick's Materials and Methods of Legal Research, and the catalogues of various law booksellers. There are many other books of value, but these few are absolutely essential.

It might be well here to stress the point that there should be a full time librarian for any law school library that aims to keep up to date and efficient. Too many libraries have suffered in the past from the lack of interest of student librarians. In the nature of things it cannot be expected that students whose primary interests are in their preparations for a professional career in the law and who serve at best but a short time in the library can give more than perfunctory attention to its needs. A library requires the continuous services of a person interested primarily in the library and anxious to build it up along sound and useful lines; and it will prove economy in the end to put a responsible trained librarian in charge with power to handle the innumerable details which when well taken care of result in the smoothly run, serviceable library.

What should such a library as the one outlined above cost? It is estimated that it would cost about $25,000. It may be slightly less than this amount, but probably will be more, depending on whether or not the library is fortunate enough to obtain second hand sets of many of the series in good condition. For current expenditures the Association of American Law Schools requires that a minimum of $7500 in five years, or $1500 a year, be spent. The average cost of all the reports of the courts of last resort for the United States and the various states amounts to about $550 a year, but if the library carries the current reports only in the National Reporter System that charge can be omitted and the cost of the Reporter System only considered. This cost is about $271.00 a year. It includes the New York Supplement, and Federal and Supreme

Court Reporters, as well as the state reporters, but does not include any of the digest services or the Blue Books. To go back to the official editions of the state reports, it seems opportune to say that this cost could be cut down considerably for the law libraries connected with state universities if they would have an arrangement made by means of which the state would furnish them with copies of the court reports for exchange with similar institutions in other states. Practically all state libraries have arrangements to exchange their laws and reports with other state libraries, but only about nine state university law schools have exchange arrangements of this kind. If more would follow the example of their state libraries in this respect it would make a considerable saving to all. It does not seem as though any legislature would make much objection to this arrangement, since the additional cost to the state for the forty or fifty copies needed would be trifling and the saving to the institution considerable.

To the cost of the National Reporter System, we must add the annual upkeep of the current American Digest service which is at the present time $20.00 a year, plus the cost of the volumes of the Third Decennial Edition now being issued. The annual cost of the six periodicals would be about $25.00, not including binding. For keeping up the current session laws, which are issued for the most part in the odd years, a sum of nearly $200 every other year is needed. This leaves us with less than $1000.00 to pay for continuations to the encyclopedias, English Reports, necessary binding, and for expenditures to add to the permanent value of the library. It is a small sum, and growth other than that resulting from the current continuations will necessarily be slow. In making additions it must be remembered that when a set is added that has to be kept currently up to date, the amount that will be available for new expenditures in future years is reduced proportionately.

A law library of 7500 volumes will require about 1250 feet of shelving. A mistake is sometimes made in estimating the required shelving for law libraries because the average space per book is based on the average size library book while law books average more space each. The amount of shelving required should be estimated on an allowance of six books per foot.

When it comes to the matter of additions to the library beyond the minimum one gets into a very debatable field. Questions arise as to relative usefulness and value on which there are reasonable differences of opinion, hence the following remarks must be considered as suggestions merely. Taking into consideration the fact that the minimum library does not have the reports of all the states brought up to the Reporter System, the first important thing to do is to get the reports of the remainder of the states and their laws, as outlined above. If funds are limited, this should be done gradually, however, while other features are being added to the library. The collected cases represented by the Trinity Series and the Public Utilities Reports should early find a place on the shelves. After the reports of the courts of final jurisdiction are filled in up to the Reporter System, the reports of the more important inferior courts should be added, such as, for instance, the Pennsylvania Superior, District and County Reports, and the Illinois Appellate Reports. The New York reports included in the New York Supplement should be brought up to that series.

Not much has been said so far about the so-called "mechanical aids", such as the various citation books, blue books of the Reporter System and digests. For research work of any kind the more of this class of books that the library can supply the greater will be the time saved to the searcher and the more complete and satisfactory will be his labors. It is therefore recommended that as important sets of reports are added to the library the citation books for those sets be purchased also and other books of this type be provided whenever funds permit.

With these last additions the library grows to about 10,000 volumes and this is an important joint in its development because it has now achieved the bare necessities and can branch out into broader fields. The next five thousand volumes might well include several additional periodical sets, such as the Central Law Journal, the American Law Review, the Law Quarterly Review, the American Bar Association Journal, and the remainder of the ten recommended in the first part of this paper. It is time, too, to begin to acquire the reports of the state courts in the official editions. More and more treatises, many of them, perhaps, the older ones much referred to in the older reports, would be added also. Local conditions and the features which are stressed by the faculty of the school will determine the development of the library beyond the "working collection" state, for every library, legal or not, grows along the lines of interest of those who work most in it.

FOOTNOTES

1. Grateful acknowledgment is here made for the very generous advice and assistance given to the writer by Dean Henry Craig Jones and Professor H. C. Horack, of the Iowa Law School.

2. 1927 Proceedings Assn. of Am. Law Schools 7.

3. The list is based on suggestions offered by the law faculty of the University of Iowa.

4. These libraries were the law school libraries of Harvard and Tulane Universities, and the state universities of Washington, Indiana, North Carolina, Texas and Minnesota.

5. Hicks, Materials and Methods of Legal Research, 106.

(This chart shows only the public laws under the session laws; it does not include the private and special laws.)

National Reporter	State	No. vols. needed to bring Supreme Court Repts. to Reporter	Last revision or compilation	Session Laws since revision: Legislature meets	Extra sessions	No. vols.
Atl.	N.J.	87	Comp. St. 1911 Supp. 1924 8v.	Annually 1925-27	1927	3
	Conn.	60	Gen. St. 1918 3v.	Odd years 1919-27	1918 1920	7
	Del.	17	Rev. Code 1915 1v.	Odd years 1915-27	1920	8
	Me.	77	Rev. St. 1916 2v.	Odd years 1917-27	1919	7
	Md.	97	Bagby Ann. Code 1924 2v.	Odd years 1927		1
	N.H.	64	Rev. St. 1926 2v.	Odd years 1927		1
	Pa.	175	Stat. to 1920 1928 Supp. 2v.	Odd years		0
	R.I.	14	Gen. Laws 1923 1v.	Annually 1923-27		5
	Vt.	65	Gen. Laws 1917 1v.	Odd years 1919-27		5
N. E.	Ill.	113	Rev. St. 1927 1v.	Odd years		0
	Ind.	109	Burns. St. Ann. 1926 4v.	Odd years 1927		1
	Mass.	138	Gen. Laws 1921 3v.	Annually 1921-27		7
	N. Y.	98	Cahill Cons. St. 1923 Supp. 1927 2v.	Annually		0
	Ohio	62	Throckmorton's Code 1926 1v.	Odd years 1927		1
N. W.	Mich.	44	Comp. Laws 1915 Supp. 1922 5v.	Odd years 1923-27	1922, 1926	5
	Minn.	25	Mason Stat. 1927 2v.	Odd years		0
	Dak.	0	Comp. Laws 1887 1v.	Odd years 1889		1
	N.D.	0	Comp Laws 1913 3v. Supp. 1925	Odd years 1927		1
	S.D.	0	Rev. Codes 1919 2v.	Odd years 1919-27	1919, 1920, 1927	8
	Neb.	8	Bunn Comp. St. 1v. 1922	Odd years 1923-27		3
	Wis.	48	Stat. 1927 2v.	Odd years		0
	Iowa	55	Code 1927 1v.	Odd years	1928	1
Pac.	Ariz.	0	Rev. Stat. 1913 2v.	Odd years 1915-27	1918 1922	9
	Calif.	63	Deering's Codes & Gen. Laws 1923 Supp. 1925, 1927 8v.	Odd years		0
	Colo.	6	Comp. Stat. 1921 1v.	Odd years 1923-27	1922	4
	Idaho	1	Comp. Stat. 1919 3v.	Odd years 1921-27		4
	Kan.	29	Rev. Stat. 1923 1v.	Odd years 1925-27		2
	Mont.	3	Rev. Codes 1921 4v.	Odd years 1923-27		3
	Nev.	16	Rev. Laws 1912 Supp. 1919 4v.	Odd years 1921-27	1920 1926	6

	Ore.	10	Olson's Laws 1920 Supp. 1927 2v.	Odd years		0
	N. Mex.	2	Stat. Ann. 1915 2v.	Odd years 1917-27	1920	7
	Okla.	0	Bunn's Comp. Stat. 1921, Supp. 1926 3v.	Odd years 1927		1
	Utah	2	Comp. Laws 1919 2v.	Odd years 1919-27		5
	Wash.	1	Remington, Comp. St. 1922 Supp. 1927 4v.	Odd years		0
	Wyo.	2	Comp. St. 1920 1v.	Odd years 1921-27	1923	5
S. E.	Ga.	83	Code 1926 Supp. 1928 2v.	Annually		0
	N.C.	100	Cons. St. 1919 Supp. 1924 3v.	Odd years 1925-27	1924	3
	S.C.	107	Code 1922 3v.	Annually 1922-27		6
	Va.	83	Code 1924 1v.	Even years 1924-26	1927	3
	W.Va.	28	Barnes' Code 1923, Supp. 1925 2v.	Odd years 1927		1
So.	Ala.	98	Code 1923 4v. in 2	Quadrennial 1923-27	1926-27	3
	Fla.	22	Comp. Gen. St. 1928 5v.	Odd years		0
	La.	89	Marr's Rev. St. 1915 Supp. 1926 5v.	Even years 1926		1
	Miss.	63	Hemmingway's Ann. Code 1927 2v.	Even years		0
S. W.	Ark.	46	Dig. Crawford & Moses 1920, Supp. 1927 2v.	Odd years		0
	Ind. Terr.	0	Ann. St. 1899 1v.			0
	Ky.	84	Carroll's St. Ann. 1922 1v.	Even years 1922-26		3
	Mo.	88	Rev. St. 1919 Supp. 1927 4v.	Odd years		0
	Tenn.	84	Shannon Rev. Code 1917 Supp. 1926 6v.	Odd years 1927		1
	Tex. Sup. 66 Crim. 20		Rev. Civil & Crim St. 1925 3v.	Odd years 1927	1926	2v.
Misc.	D.C. Sup. Ct. 22 App. 47		Code 1924 1v.	1926-27		1v.
	Hawaii Sup. Ct. 29 D.C. 4		Rev. Laws 1925 2v.	Odd years 1925-27		2v.
	P.R. Sup. 33 Fed. 12		St. & Codes 1911 1v.	Annual 1912-27	1913,14, 18 (2), 23,24	18v.
	P.I.	48	Pub. Acts & Res. 1900-7 7v.	Annual Pub. Laws		22v.
	Virgin Islands	0	Mun. Codes St. Thomas & St. Croix 2v.			

LIST OF RECOMMENDED TREATISES

Actions (Common Law)
Martin, Civil Procedure (1899)
Admiralty
Benedict, Admiralty (5th ed. 1925) 3v.
Hughes, Admiralty (2d ed. 1920)
Agency
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LEATHER PRESERVATION *

By Dr. G. E. Wire, Librarian, Worcester County Law Library, Worcester, Mass.

So many inquiries, personally and by letter, have been received concerning our methods of preserving leather, that it seems best to explain somewhat in detail, these methods, and to give still more and further information on these and related subjects, for the benefit of those interested. Careful examination of all the books on practical bookbinding, published in England and America for the last 60 years, shows that no adequate treatment of the subject of leather preservation has been accorded to it in any of these works. Conversation with American, English, Swedish, and Finnish bookbinders has proved that they were entirely ignorant of the first principles of leather preservation.

In addition to the books on practical bookbinding, our English friends have also issued three reports on the subject of binding leathers, their tannage and decay. These show good, hard, conscientious work on the part of our English brethren, a thoroughness of investigation, and a faithful adherence to the most rigorous and complicated methods of leather testing, which leaves nothing to be desired in that line of work. But nowhere do we find any adequate information on the care and preservation of ordinary leather bindings. There are many books on the manufacture of leather, including binding leathers, and also preservation of, and dressings for, leather goods. But so far as we know there is no satisfactory treatment of the preservation of leather-bound books, such as the law library contains by the thousand. If we are mistaken in this statement we welcome corrections. There seemed to be nothing to do but let them decay, and then reback, if sewing and bands were good, if not rebind, usually in the same kind of leather to rot out some more. All binding leathers must be finished comparatively dry, so as to take gilding and finishing well. Two pieces of the same calf or goat-skin, one finished for the boot and shoe trade, and one for the binding trade, both done in the same tannery, by the same men and machinery, aside from the artificial grain, may be readily distinguished by the absence of oil, grease or stuffing, alone in the binding leather, and the presence of these agents in the piece treated for the boot and shoe trade.

Of course the expensive bookbinders have in their employ experts who can and do clean and repair fine bindings, just as they have experts who can clean and repair the printed pages of these same rare and costly volumes. But these processes are largely either trade secrets, or handed down from one generation to another, and are not available for the use of the general public.

* Presented at the Twenty-third annual meeting at French Lick, Ind., May 29-30, 1928.

We are now writing of the preservation of ordinary leather-bound books, such as are found by the thousands in law libraries in this country and in England, books for the most part whose leather and binding date back to 1850. Comparatively few bindings antedate that figure, and when they do, their calf and sheep is better than that on later volumes as a general thing. These remarks will apply to any leather covering, where the color is not so delicate as to be affected by the preservative. Thousands of volumes of the United States "sheep bound set," of other documents, of the older literature of theology, science, medicine, as well as law, are in the same forlorn condition, as are our law books. Previous to 1850 but few books were bound in cloth.

Materials needed are vaseline, varnish, air, sun, strength, patience, observation and time. By vaseline we mean any of the higher grade preparations of this petroleum by-product. We use Lucelline put up for medical use by the Lucent Oil Co., of Philadelphia, Pa., and generally to be obtained from any large paint and oil house or wholesale druggist. But any other high grade product of this character will do. The ordinary commercial vaseline, which used to retail at 10 cents a pound, is what we began our work with, but in ordering a supply we were given Lucelline, and it has been so satisfactory that we have used it entirely for the last twenty years.

This product has risen in price in the last few years and our market price in Worcester is now 30 cents a pound by the 5 pound can.

For varnish we now use and recommend Barco, made by The Holliston Mills Inc. Norwood, Mass. and to be obtained at all of their agencies throughout the Country. We buy it by the quart package and the last one cost us $1.50 delivered. We apply it full strength. We used to thin out the varnish but of late years, and after much experience we have come to the conclusion that full strength is best. If it becomes too thick we do reduce it with Denatured Alcohol.

The work should be done in a well lighted, airy place, better in the summer months when windows can be opened, than to depend entirely on artificial heat to dry in the vaseline.

A smooth pine table, some pine shelves to hold one or two hundred volumes are necessary. The agent is best applied with the bare hand, the nails should be cut short and sleeves cut short or rolled up, a long frock or apron should be worn by the operator. If the floor be an oiled concrete floor such as we have in our stack room, no damage will be done, also if it be an ordinary hard pine floor. But if it be any stone floor, or be covered with an substance like linoleum or cork carpet, it were best to protect the floor or covering with layers of heavy paper or else use sawdust on it. All surrounding and contiguous objects, shelves, trucks, floor, etc., are liable to become more or less anointed, so that due warning should be taken of the dangers and consequences. Plenty of soft cloths and one or two small pans for holding the agent should be provided and of course opportunities for washing up at the close of the day's work.

The work can be done by your janitor or char-woman just as well as by an outsider. College libraries can utilize student help. Any person of ordinary intelligence and sufficient strength and judgment can do the work. One of

your own staff can do this work a few volumes at a time, and watching them to see when they are dry, can go on with a few more volumes. In damp or muggy weather, such as the dog days, we found the progress was slow, the vaseline would not penetrate the leather. The process has a tendency to slightly swell outward both front and back covers and so the volumes have to be spaced out on shelves for several months until they can be closely ranked together again. If closely packed on the shelves they cling tightly to each other and there is danger of pulling a whole shelfful of books onto the floor, when you only wanted one volume in your hand.

One person should not be expected or allowed to do more than 85 octavo volumes in one day of seven hours. If the work needs to be rushed more than this, put on more helpers. Each volume should be rubbed from 3 to 5 times, according to the condition of the leather, to insure the best results.

From 20 to 50 volumes to be treated being placed on the table, the operator being suitably attired and having a small panful of the agent before him, places a volume on the table, back up, and first anoints the back, rubbing it well into the grain of the leather. The sides are next treated, also the edges, care being taken not to get any on the paper. Small portions should be used and well rubbed in with a firm flexible hand. The first application will rapidly absorb as a general thing, then a second lot is put on and well rubbed down as before. Care should be taken to put more of the agent into the back and the edges of the back, in proportion of 2 to 1 or 3 to 1, to that rubbed into the sides. The volume is now put on the drying shelves, a half inch or so between it and its fellow, and the next volume is taken in hand. Too much stress cannot be laid on this matter of rubbing in the agent. The labor costs more than the material, but good, hard, conscientious and faithful rubbing is the main part of the treatment. It is the only way to incorporate the preservative in the leather. Merely dabbing it on with a cloth or pad of cotton and rubbing it off again, while of course better than nothing will not give good results. Putting on a quantity at a time and depending on itself to dry in will not do either. We have volumes on our shelves which have been drying for seven months and will have to be gone over again and thoroughly rubbed before they will be fit for use. No light rubbing with pads of cotton or cloth will take the place of the bare hand, full palm being used.

The volumes should remain on the drying shelves at least over night, or if that cannot be done, from early in the morning until late in the afternoon. They are then carefully examined and all surplus material rubbed into the dry spots of the leather. If possible they should remain out of the regular shelves another day before being wiped with a soft cloth and spaced out on the regular shelves.

These are the general principles of the process as clearly and distinctly stated as can be on paper. Much difference will be found between the leather on any set of state reports, even when long runs are bound at the same time. This will be true of long runs of periodicals covering approximately the same period of time. This difference will be more apparent in the covering of reports or periodicals, bound as they appear, volume by volume or year by year, whether by the same binder or not. The skins will vary constantly. Sheep

as a rule absorbs more vaseline than does calf skin. Then again some sheep skins are alum tanned or have other dressings which prevent their absorbing as much of the preservatives. The older sheep skins, like the older calf skins are the best skins, and have the best tannage. The board under the leather also makes some difference in the matter of absorption and there is probably some difference between glue and paste used to fasten the leather to the board. The operator should exercise judgment, and be able to learn quickly, by the feeling of the leather, just how much of the agent to use, and to estimate how much of the agent the leather will absorb. Too much stress cannot be laid on the question of rubbing, and rubbing and rubbing again by strong flexible hands. It will not do to daub a lot of the agent on the leather and trust to luck and time for the absorption of the agent.

In using the books for the first six months it may be necessary to watch them as issued to readers, and have a cloth handy for an extra rubbing or wiping if the agent is not incorporated into the leather, before taking them to the reading room. If the readers be admitted to the stacks care must be taken that they do not soil their hands or clothes on the books or shelves. In the course of from six months to a year, depending on all the various conditions given above, the leather will assume a shiny appearance, not sticky as a general thing, and not showing finger marks. The older the leather and the darker before the application, the darker it will be after the application. The average of the sheep bound reports in this library now have a dark tan shade on which gold lettering shows up plainly, whereas on newly bound sheep books, gold lettering is of no contrasting shade. It will readily be seen that as a rule the newer the leather, less than five years old, the less preservative it will need, as the decay does not begin in so short a time. This process once thoroughly done should not need to be repeated short of at least 10 years, depending of course on local conditions, state of the leather, use of the books, atmosphere outside the building and in the stack room.

Our first work of this kind was done in the summer of 1903 and we did not use as much of the preservative as we do now. But the books so treated are looking well and wearing well. The leather has a firm yet soft feeling and the disintegration and decay has been arrested. Does this leather so treated have a tendency to collect dust and dirt? Not according to our experience in this library. On the contrary it, to a large extent, dependent on age of binding and condition of leather, arrests decay and stops the disintegration so common in law libraries and document collections. We are cleaning the books in the stack room constantly, and before they were all vaselined the difference was marked between the aisles where were the vaselined and the unvaselined books. In the former aisles there was little or none of the small particles of decayed leather to be seen on the floor after they had been taken from the shelves and wiped with a damp cloth. In the latter the mere rubbing or wiping with a damp cloth, not only left its marks on the cloths, but more or less particles were constantly falling on the concrete floor of the stack room, to be brushed up and removed later. We wish here to emphasize the fact that we do not recommend this process except for any leather whose color or shade will stand the change without harm. The darker shades of calf and morocco as yet have not been

treated by it only in isolated examples. So far as we have seen in these few examples it does not make any perceptible difference in the shade. But we do not recommend its use on the delicate shades of calf or morocco such as are found on gift books. That whole subject of fancy and expensive bindings is outside the limits of this article. There are private or secret processes and expensive binders for such work. In case of new books, new with us means inside of five years, we find the agent does not perceptibly darken the sheep skin. We are using it on all our new sheep bindings, of which we have comparatively few owing to our insistence on the use of buckram or other cloths on new books, and find it works even better on them than on older books. An ounce of prevention is worth a pound of cure. As a general thing the new binding does not need as much and will not absorb as much as the older binding.

Lucelline is a mineral product and there would seem to be some discrepancy about using it on animal surfaces. But do we not eat and drink all kinds of synthetic compounds every day? Take the essential oils and essences, does anyone suppose for one moment that our favorite flavors of after dinner mints come from the piney forests? There are now in print 3 different formulae for leather preservatives, two in this country and one in England. I hope this summer to experiment on them as purely a matter of courtesy. But I do not expect to find any of them to be better than the lucelline process which I have been using for the last 25 years. So far as I know that is a longer record than anyone else holds. This lucelline process is now in use on hundreds of thousands of law books in various parts of this country.

Having treated the book with the preservative and thoroughly dried it in, we polish the surface with a soft cloth and now proceed to varnish. This we do only to text books as a general thing. No reason why it should not be applied to all books if you wish to go to the expense.

We put a small quantity, not over one ounce at a time, in a small enamel or earthen cup or pan, and with a flat camel's hair brush one inch wide, we proceed as follows. Slightly opening the covers, leaving both of them free, and holding the book by the fore edge in the left hand, apply the varnish with the brush in the right hand, quickly, lightly and evenly, first to the back and then to the sides and edges. This will allow the back to dry in time to receive a second coat before the volume is laid face down, or stood erect, to dry a few hours, better over night, before going back on the shelves.

If the weather be damp and moist the book is liable to be sticky or tacky and of course if packed too closely with other books will adhere to them. This varnishing over the vaseline seals the leather and gives it a clean hard surface very agreeable both to sight and touch. We also varnish the backs of all smooth finished cloth bound text books, and if the cloth is extra light colored or subject to much usage we varnish the entire book. All dirt, dust and mud may be instantly wiped off the varnished surface with a damp cloth. Pastewashing and varnishing tends to crack and destroy the leather, and does not soften or preserve it in the slightest degree. But the combination of vaselining and varnishing in our experience is the best thing for the text books. As a general thing a better grade of leather is used on text books than on the reports, and the text books so treated look better than a row of reports of the same general

age and appearance. The average sheep skin on our reports is very similar to that found on the sheep bound set of United States Documents, and a volume, 4430, date of 1903, of that set sent on to us for treatment from the Simmons Library School resembles in appearance our reports of that same year.

Our work has been exclusively on law books and law leathers, but these processes in whole or in part, or a modification of them are suited to other leather bound books in other libraries. In all public and college libraries having what is known as the sheep bound sets of government documents, will be found hundreds if not thousands of volumes needing vaseline just as did our sets of state reports. Also all the whole or half calf or sheep bound sets of periodicals, societies and transactions need the same treatment. In case of much used sets, as North American Review, it might be advisable to varnish as well as vaseline. Also sets in ½ cow or goat as well as full bindings may be much improved by using this process. In the case of single volumes or small sets, especially in morocco, half or full, of dark shades where the leather is soiled or dirty, it may be advisable to wash them in ivory soap and water. Care, of course, should be taken to dampen the entire leather surface and not to wet the end papers, or in case of ½ or ¾ bindings not to dampen the side paper or cloth. So much care is not advisable in ordinary sheep bindings, although as a rule any preservative penetrates the damp leather quicker and deeper than the dry leather. We thus washed and vaselined a full bound book in dark green morocco and then varnished it, producing an admirable effect and much improving what before had been a soiled and disreputable binding. Of course in treating ½ or ¾ bindings care must be taken not to get vaseline on the end papers or side cloths or papers. It does them no good and only stains them. If it can be afforded, and such cloth sides are smooth finished cloth, they may be much improved by a coat of varnish.

These methods are also applicable to ½ or ¾ bindings used in so many public libraries for fiction and juvenile, or to the publishers' bindings of ordinary cloth, or the A. L. A. re-enforced bindings, or the various special ½ leather bindings now on the market. More than any of these is the full process needed on the cheap ½ leather bindings, usually cowskin, cowskin buffing or sheep roan which many of the smaller libraries are forced to use on their hardest used books, fiction and juvenile. These books rot out or crack out in a short time and need the preserving power of the vaseline. More than the longer lived and better leathers do these cheaper leathers need the preservative. These leathers, cow or sheep skin, need as much or more care than the better leather, full covered sheep books. One heavy coat of vaseline well rubbed in with some extra on the back, should be allowed to dry thoroughly before the second coat is applied. This second coat should be done carefully, pains being taken not to leave any dry spots. When this second coat is thoroughly dry and the new life is apparent, then may the leather be varnished and of course the paper or cloth sides may share in this coat, and the book have plenty of time to dry. Then you have a book which, if reasonably well bound in the first place will stand about all possible abuse from the careless borrower.

It goes without saying that the smaller the book fund and binding fund, the more imperative is the need of economy in binding and repair to make the

money go as far as possible. This process when applied to the newly rebound book before issuing, will add 50% to the life of that binding. Even with the older and much worn and soiled binding, it will materially prolong the life of the binding, and increase the use of the book by so much.

The ordinary publishers' cloth binding is a thin, fine grained cloth of some light shade, stamped with letters and designs in gold and various colors. The most that can be done with this is to give it a coat of varnish on both sides and back and let it dry thoroughly before the book is issued. This also applies to the heavier buckram bindings, if the buckram is smooth finished, and to the special re-enforced A. L. A. bindings. Such varnished bindings resist dirt, rain, mud, grease and fingermarks, and can be wiped clean with a damp cloth, said cloth being moistened with an antiseptic solution if necessary. The better grade of new binding in ¾ cow or pig skin, need two coats of vaseline, if time can be spared, always giving an extra supply to the back. When dry, varnish the whole book, leather back and paper or cloth sides, and you have a handsome and durable binding which should outwear the paper in most cases.

In closing we wish to repeat what we have so often written in former reports. We disclaim any empiric methods and give only the results of our own investigations, observations and work, which has long passed the experimental stage. We are aware that there are other agents, and other processes, but we give here what we have tried and found good. Nor do we claim unreasonable virtues for these processes, but this we do claim, that for the money cost, from one cent to three cents a volume according to price of labor and materials, we have not yet found any process so efficacious, easy and satisfactory. But we do find them valuable and profitable, and should be glad to hear from any one who has tried them.

NOTES

Other papers presented at the Twenty-third annual meeting of the American Association of Law Libraries at French Lick, Ind., May 29-30, 1928 will be printed in the next issue of Law Library Journal.

THE "NOTING-UP" OF ENGLISH LAW REPORTS

By Arthur R. Hewitt, Assistant Librarian of the Honourable Society of the Middle Temple, London.

Every lawyer must realise how essential an Index of Reported Cases judicially referred to or otherwise commented upon, is to him in his everyday work. The Index should be as complete as it is possible to make it and should be kept up to date of the last reported case.

The two methods of noting-up in general use are: (1) Entries by hand in the volumes of reports themselves; and (2) In the form of a card index. In the opinion of the writer the latter is by far the most effectual. The method of noting-up in the volume is as follows. Take for instance the Law Reports, Chancery Division, volume 10 at page 273, there would be noted in the margin *"Ref.* [1898] 1 Q. B. 716, and *Consid.* 88 L.J.Ch. 60." And so all reported cases would be noted in the margin referring the lawyer to others in which they had

been judicially considered or commented upon. This, of course, shows at a glance how the case has been dealt with, but the great disadvantage of this method, in fact a disadvantage which almost rules it out of court, is to be found in the appearance of the volume after a few years. The margins would then be filled with notes and the book would have to be inter-leaved or the noting-up made on sheets of paper inserted at the end. This would give the book a bulky and untidy appearance and would tend to put additional strain on the binding. Further, in two or three years there would probably be as many variations in the style of handwriting in the volume, thus contributing still more to its untidy appearance.

The second method of noting-up, namely on cards, is by far the better, not only from the viewpoint of tidiness, but also by reason of its utility and easy reference. If, for instance, Benning v. Ilford Gas Company is over-ruled in Smith and others v. Schilling ([1928] 1 K.B. 429), the reference would appear thus: "Benning v. Ilford Gas Company [1907] 2 K.B. 290. *Over-ruled* Smith and others v. Schilling [1928] 1. K.B. 429." With this method, the lawyer having found a case which is of assistance to him, turns it up in the index, for example: "Dormer v. Ward [1901] P. 20 "and finds, at a glance, that it was *Distinguished* in Nepean v. Neapean, [1925] W.N. 80, 41 T.L.R. 366 etc., and *Followed* in Bosworthwick v. Bosworthwick, 70 S.Jo. 857, [1917] P. 64, etc.

As the index increases in size it can be steadily enlarged by the addition of new boxes or drawers, and the lawyer's library would always maintain its clean and tidy collection of reports.

PHANTOM CITATION—AGAIN

Since its appearance in the Law Library Journal 20: 98-99, by courtesy of Professor James, I have received three bouquets and one brick bat on and about that article. It does now appear that someone, somehow and at some time, bound up two copies of Upper Canada, Queen's Bench Reports, volume 27 in our set, labelling one of them correctly, and the other vol. 37, and that was the cause of our error. Never mind, it gave us a lot of advertising, and showed our disposition to help the other fellow.

Dr. G. E. Wire,
Worcester County Law Library, Worcester, Mass.

August 7, 1928.

ANNOUNCEMENT

The next conference will be held in Washington, D.C. during the week of May 13, 1929. Further announcements will appear in the next issue of Law Library Journal.

AMERICAN STATE REPORTS AND SESSION LAWS EXCLUSIVE OF SIDE REPORTS

Revised to October 1, 1928

Publication	Dates of regular sessions	Source	Latest vol. to appear
Alabama			
Reports	. . .	West Pub. Co., St. Paul, Minn.	217
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Reports	. . .	West Pub. Co., St. Paul, Minn.	7
Session laws	Odd years	Secretary of Territory	1927
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Illinois			
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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, of Index to Legal Periodicals and Law Library Journal published quarterly at New York, N. Y. for Oct. 1, 1928.

STATE OF NEW YORK
COUNTY OF BRONX

Before me, a Notary Public in and for the State and county aforesaid, personally appeared W. C. Rowell, who, having been duly sworn according to law, deposes and says that he is the Vice-Pres. The H. W. Wilson Company, publishers of Index to Legal Periodicals and Law Library Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Name of— *Post Office Address—*

Publisher, THE H. W. WILSON COMPANY
958-972 University Avenue, New York, N. Y.

Editor, ELDON R. JAMES
Harvard Law School, Cambridge, Mass.

Managing Editor, NONE

Business Managers, THE H. W. WILSON COMPANY
958-972 University Ave., New York, N. Y.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)

American Association of Law Libraries, New York, N. Y.; John T. Fitzpatrick, Pres., New York State Library, Albany, N. Y.; John J. Daley, 1st Vice-Pres., Law Society of Upper Canada, Toronto, Canada; Mrs. W. F. Marshall, 2nd Vice-Pres., Mississippi State Library, Jackson, Miss.; Lucile Vernon, Sec. and Treas., Association of the Bar, 42 W. 44th St., New York, N. Y.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent. or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person of corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiants's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is (This information is required from daily publications only.)

THE H. W. WILSON COMPANY
Per W. C. ROWELL, Vice-Pres.

Sworn to and subscribed before me this 21st day of September, 1928.

[SEAL] E. SMITH.

Notary Public, Bronx County, N. Y.

(My commission expires March 30, 1929.)

County Clerk's No. 209. Register's No. 2975